

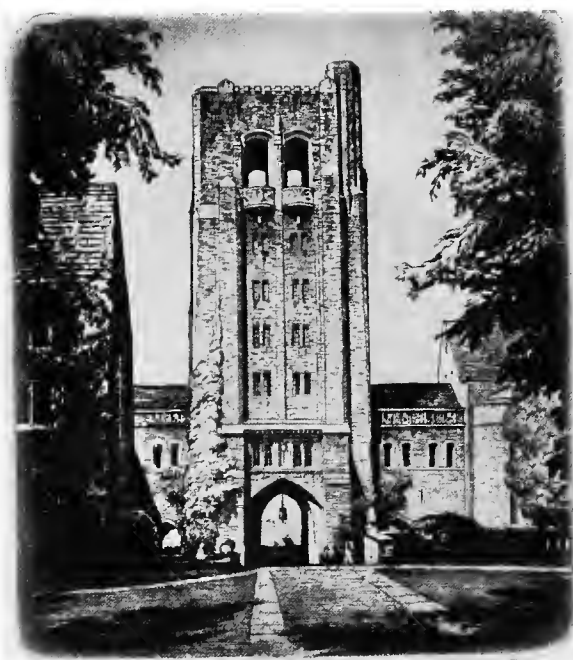
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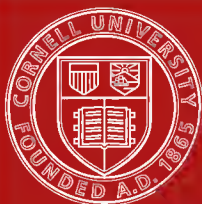
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HAYES, George

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ERRATA.

Page 30 line 10 from the bottom, *for* "obliquy" *read* "obloquy".
Page 77 line 1 *for* "VITCORLÆ" *read* "VICTORLÆ".

BIOGRAPHICAL PREFACE.



HIS volume contains, as its Title indicates, a few of the clever and amusing *jeux d'esprit*, legal and political, written by the late Mr. Justice *Hayes*, while he was in practice at the Bar, some of which appear in print now for the first time.

GEORGE HAYES, (afterwards successively Mr. Serjeant *Hayes*, and the Honourable Mr. Justice *Hayes*,) was the second son of *Sheedy Hayes Esq.*, a West Indian Proprietor, and was born in *Judd Place* in *London* on the 19th of June, 1805.

He was educated partly at the School at *Highgate*, and partly at the College of *St. Edmund's* at *Ware*. Having determined upon the law as his profession, he became an articled clerk to a Solicitor. After he had completed his articles and before he was admitted on the Roll, he determined to go to the Bar, and was admitted a Student in the *Middle Temple* on the 29th of *November*, 1824. Having completed his terms as a Student, he commenced practice as a Special Pleader, for which his singularly acute mind eminently qualified him. He does not appear, however, to have long practised beneath the Bar as a Special Pleader, for, on the 29th of January 1830, he was called to the Bar by the Hon. Society of the *Middle Temple*.

Mr. *Hayes* joined the *Midland Circuit*, and also the *Warwickshire* Sessions, which Sessions he attended regularly until

he received the Coif. He and Mr. *Miller* (afterwards Mr. Serjeant *Miller*) for some years led the *Warwickshire* Sessions. It was while he was so attending these Sessions that the incident happened which suggested the Song "The Cock and the Dog", for which see *post* pp. 54—59.

At the time Mr. *Hayes* joined the *Midland* Circuit several distinguished members of the profession were also members of that Circuit. Amongst them were, Mr. (afterwards Lord) *Denman*, Lord Chief-Justice of the Queen's Bench; Mr. Serjeant *Vaughan*, afterwards a Baron of the Court of Exchequer; Mr. Serjeant *Goulbourn*; Mr. *Balguy*, a Commissioner of the Court of Bankruptcy; Mr. *Matthew Davenport Hill*, also a Commissioner of the Court of Bankruptcy, and the distinguished first Recorder of *Birmingham*; Mr. *Waddington*, Under-Secretary of State for the Home Department; and Mr. *Mellor*, afterwards one of the Judges of the Court of Queen's Bench.

Mr. *Hayes* soon rose into extensive practice, as a junior, both at Sessions and on the Circuit. In Sessions' Appeal Cases he was peculiarly successful, and was largely employed—a class of business which, at that period, formed a very lucrative portion of the practice of a successful junior.

During the year 1839 Mr. *Hayes* married Miss *Sophia Anne Hill*, daughter of Dr. *Hill* of *Leicester*.

In *Hilary* Vacation 1856 Mr. *Hayes* was raised to the degree of Sergeant-at-Law, in company with Mr. (afterwards Baron) *Piggott*, and Mr. (afterwards Sir) *Mordaunt L. Wells*; and on that occasion gave rings with the motto "*Cedant arma togæ*".

In *Hilary* Vacation 1861 he received a patent of precedence to rank after Mr. *A. J. Stephens*, Q.C., and on the promotion to the Bench in *Michaelmas* Vacation 1861, of his old friend Mr. Justice *Mellor* he was appointed Recorder of *Leicester*, and divided the leadership of the *Midland* Circuit with the late Mr. *Macaulay*, Q.C.

In the Spring of 1864 came the alteration in the *Northern* and *Midland* Circuits, (pursuant to the Order in Council of

December, 1863,) by which *Yorkshire* was taken from the *Northern* and transferred to the *Midland* Circuit, with the addition of *Leeds* as a second Assize-town for the County of *York*; and from the *Midland* Circuit, were taken the Assizes for the counties of *Leicester, Rutland, and Northampton*, which were transferred to the *Norfolk* Circuit. The first Assizes at *Leeds* were held in *August 1864*, Lord Chief Justice *Cockburn* being senior Judge. At both *York* and *Leeds*, thus added to the *Midland* Circuit, Sergeant *Hayes* acquired a very considerable practice as a leading Counsel.

In the Vacation after *Trinity Term 1868*, in pursuance of the Election Petitions Act, (31 & 32 Vic. cap. 125.) which provided for the appointment of an additional Judge to each of the Common Law Courts, Mr. Sergeant *Hayes* was appointed one of the Justices of the Court of Queen's Bench, Sir *William Balfour Brett* S. G. (now Lord *Esher*, Master of the Rolls) being at the same time appointed a Justice of the Court of Common Pleas, and Mr. *Anthony Cleasby*, Q. C. a Baron of the Court of Exchequer.

The judicial career of Mr. Justice *Hayes* was lamentably short—only fifteen months. On Friday the 19th of November 1869, at the conclusion of the labours of the day, and whilst un-robing in the Judges' private room at *Westminster* he was suddenly struck down with paralysis; in the course of the evening he was removed from the Judges' room to the Westminster Palace Hotel, where he lingered in a state of insensibility until ten o'clock of the evening of *Wednesday, the 24th of November 1869*, when he calmly expired.

The sudden illness and sad death of Mr. Justice *Hayes* caused deep regret to both the Bench and the Bar, particularly to the *Midland* Circuit, where an intimate knowledge of his private worth, and a just appreciation of his varied attainments (for he was very much more than a mere lawyer,) caused him to be greatly esteemed and beloved. He had won all hearts to him, for he was indeed a man of a gentle spirit and genial soul.

The following, from the pen of Mr. Justice *Wills*, will be read with great interest—

‘ He was a man of singularly modest character and retiring disposition, so much so that probably the full extent of his numerous and varied accomplishments, as well as of his sound learning was known only to his intimate friends. He belonged to two schools of lawyers. He had learned his law in days when technicality was rampant, and when the influence of antiquity was supreme: and he was at the Bar for many years after the spirit of Reform had thoroughly leavened the practice, and seasoned the administration of the Law. He had accumulated really vast stores of ancient learning, which never lost their attractions for him. He was one of the best real-property lawyers of his day, and could hold his own in questions of real-property with men who spent their lives in dealing with them. The mysteries of the systems of special pleading which flourished both before and after the New Rules of H. T. 4 Wm. 4 were equally familiar to him. The keen sense of humour with which he was gifted made him singularly alive to their absurdities, and the halting character of the reforms of 1834, and the monstrous results arrived at by the inflexible logic of Baron *Parke* rigorously and remorselessly applied to such a scheme, were never absent from his mind. The revolt of his strong good sense against these consequences found its expression in the “*Crogate’s Case*”, printed in this volume,—a ruthless exposure of the absurdities and injustice to which the system had led.* Being, as he was, a very sound lawyer, deeply imbued with legal principles, he was not spoiled, as many men would have been, by his intimate familiarity with every thing that was bad as well as good in the special pleading of the days before the Common Law Procedure Act of 1852, and he welcomed with the utmost

* Serjeant *Hayes* used to say that Lord *Wensleydale* was the most forgiving of mortals. He read ‘*Crogate’s Case*’,—which had been privately printed—and having read it, invited the author to *Ampthill*, where he gave him the heartiest of welcomes. A. W.

heartiness and satisfaction the immense improvements wrought by that great measure, and its successor of 1854.

As an advocate he was very unequal. He always used to say that his reputation as a lawyer had stood in his way at *Nisi Prius*, in as much as people would not believe that he could be useful in the common routine of work, where no law was wanted. Conscious, no doubt, of his great powers of humour he has often said "I ought to have had the little actions of 'flander and breach of promise of marriage, instead of which 'I argue demurrers." Whether it was from a want of interest in common place matters, from a native diffidence for which there was little ground in fact, or from any other cause too subtle for definition, he had not the large general practice that might have been expected from his brilliant abilities. A certain consciousness that he was passed by men who could hardly be considered his equals, either in legal learning or in general accomplishments, no doubt, helped to give to some of his forensic performances in every day cases a hesitating character which undoubtedly interfered with his success. But he had all the power of advocacy within him, and you never knew when a brilliant display would not be forthcoming. An intimate friend recalls an occasion when, at *Guildhall*, Serjeant *Hayes* and himself were faring very badly before *Erle*, C. J., and a special jury. The case turned chiefly upon an interminable correspondence, and as they went home together Serjeant *Hayes* said "The Chief Justice does not understand it yet—and no wonder. On Monday morning I will *make him see it*, and you 'see if I don't get the verdict." His companion hinted that it was not the easiest thing to turn the mind of the late most respected Chief Justice. "That is true enough," said the Serjeant, "when he has really taken in the whole story, and then 'made up his mind—but I see where he has got on the wrong 'track—and I am sure I can set it all right!" and surely enough on the Monday morning his junior listened to one of the most masterly analyses of a vast mass of material, and one of the most

cogent and forcible arguments he has ever heard before or since. Serjeant *Hayes* was as good as his word—the Chief Justice was convinced—the jury satisfied, and the verdict won, to the great surprise of the opponents, who had gone home confident and jubilant on the Saturday.

In cases in which there was free scope for the display of his rare powers of humour, he was quite unrivalled. The late Lord Chief Justice *Cockburn*, with whom Serjeant *Hayes* was a great favorite, and who keenly appreciated the delicacy of his wit, has been known, on more than one occasion, to lean back in his chair, and give free play to his sense of the ludicrous, quite unable to control his laughter. One memorable instance of this kind was afforded by an action of slander tried at *Warwick* before the Lord Chief Justice, in which Serjeant *Hayes* was for the defendant. The plaintiff, who complained that the defendant had slandered him by calling him “*a thief, a d—d thief, and a blasted thief*,” had evidently thought that in the multitude of counsellors there was safety, and had secured the services of Mr. *Macaulay* Q. C., Mr. *Mellor* Q. C., and Mr. *Wills*. When it came to Serjeant *Hayes*’s turn to address the jury, he began as follows—“For a long time I have been ‘utterly unable to understand why, in such a case, there should be such an array of counsel for the plaintiff, but I think that ‘I have, at last, found the key to the mystery. There are three ‘degrees of comparison in the slander, and so it is appropriate ‘that there should be three counsel, each to represent one of the ‘degrees. There is my friend Mr. *Wills*, who has risen to ‘great heights *out* of the profession to which he belongs,* and ‘who, we all hope, will rise to a great height *within* it. What ‘more natural than that, young and ingenuous, he should be ‘chosen to represent ‘*the thief*’, pure and simple? But, when ‘it came to ‘*a d—d thief*’, nothing less than a Queen’s Counsel

* An obvious allusion to the learned counsel’s well-known love for, and success in *mountaineering*. The hope expressed in the latter clause of the sentence has been amply realized. E. M.

"and a Member of Parliament would do; and they have, with equal propriety selected the respectability and gravity of my friend Mr. *Mellor*. Even this is not enough—for 'a blasted thief', they must obviously have something higher still—and who could possibly answer to such a character but the leader "of the circuit—the gifted Mr. *Macaulay*?"

Judge, jury, counsel, and spectators were convulsed with laughter, provoked alike by the matter and the manner of the speaker, over whose expressive and delicately modelled features the sense of humour used constantly to steal, in advance of what he was going to say, and the sunshine of whose delightful disposition and cheerful temper had about it, in his happier moments, something irresistible and catching.

The Serjeant's good sayings were not confined to the arena of *Nisi Prius*. Very dry legal arguments were sometimes enlivened by his quick sense of the ludicrous. In *Woodward v. Dowse* 10 C. B. (N. S.), 722, a solemn argument was had before *Williams, Willes, Byles, and Keating, JJ.* upon the question whether a woman who had misconducted herself as a wife had lost her dower, notwithstanding that she was driven away from her home by her husband's cruelty. It happened that just then a case, in which a lady had eloped with her husband's servant was in everybody's mouth. Serjeant *Hayes* cited, in the course of the argument, the case of *John Camoys*, mentioned in *Bac. Abr. "Dower" (P) 8*. *John Camoys* granted his wife *Margaret* to Sir *William Paynel* by a formal deed—"noveritis me tradidisse et dimisisse . . . domino *Gulielmo Paynel militi Margaretam . . . uxorem meam*." (See 2 *Inst.*, 435, where the deed is given in full.) "Did the lady lie in *grant* or in *livery*, Brother?" asked *Byles, J.* "A nice question, My Lord!" was the ready answer, "unless the grantee were the footman, in which case, I apprehend, there would be no doubt as to the answer."

The great professional achievement of his life was his conduct of what was known, at the time, as "the *Matlock Will Case*", which was a forensic performance of the very highest kind,

combining almost every quality which goes to make a great advocate. The case was a very remarkable one. One day, in the year 1857 or 1858, Serjeant *Hayes* was instructed to attend before an Examiner of the Court of Chancery, to cross-examine two labouring men named *Gregory* and *Buxton*, who were produced in a Chancery suit, brought to establish the validity of three codicils to the will of a gentleman named *George Nuttall*, who died leaving property to the value of £ 50,000, or £ 60,000. *Gregory* and *Buxton* were the attesting witnesses to the first codicil, dated 27th. October 1855, and, according to the Chancery practice of those days, having made affidavits were subjected to cross-examination in the Examiner's office.

Returning home with a friend on the evening of the day on which the cross-examination had concluded, Serjeant *Hayes* told him that he thought the case he had been engaged upon would turn out a very curious one. This prediction was amply justified. The Master of the Rolls (Lord *Romilly*) directed an issue to be tried as to the validity of the codicil witnessed by *Gregory* and *Buxton*, and of two others, dated respectively the 6th and the 12th January 1856; the conjoint effect of the three being practically to disinherit the relative, who took under the testator's will, and to bestow the bulk of his property upon a person who had been, for many years, in the employment of the testator, and upon certain persons more or less connected with him. The second and third codicils were witnessed by persons in a better class of life than *Gregory* and *Buxton*, one of them being a surgeon. There was thus a strong case of direct evidence in favour of the codicils. Against this evidence was to be set a mass of circumstances of more or less value, making it extremely improbable that the codicils should be genuine. The case was tried at the *Derby* Summer Assizes 1859, before *Erle*, C. J., the counsel for the plaintiffs, who sought to establish the codicils, being Mr. *Macaulay* Q. C., Mr. *Mellor* Q. C., and Mr. *Field*; and the counsel for the defendants, Mr. Serjeant *Hayes* and Mr. *Flowers*. The jury found a verdict in favour of the codicils.

The Master of the Rolls was dissatisfied, and ordered a new trial, which took place before *Pollock*, C. B. at the next *Derby* Assizes, (Spring 1869), when the jury found a verdict for the defendants. It is worth mentioning in passing, that the Lord Chief Baron, whose skill in imitating hand-writing was well-known to his contemporaries, wrote a letter to Serjeant *Hayes* during the Easter Vacation which followed, half of which was written in the hand-writing of the testator, Mr. *George Nuttall*, and the rest in the hand-writing of the person who was supposed to have forged the codicils; and very admirable imitations were the two portions of the letter.

The plaintiffs moved for a new trial. The Master of the Rolls, who never varied in the view he entertained of the case from the first, refused it. An appeal was made to the Lords Justices, who were divided in opinion; Lord Justice *Turner* being for a new trial, whilst Lord Justice *Knight-Bruce*, who took a strong view in the same direction as the Master of the Rolls, and delivered an extremely characteristic judgment, was against it. The plaintiffs appealed to the House of Lords, who by a majority of two to one ordered a *third* trial to take place at the *Guildhall*, before Lord Chief Justice *Cockburn*. By this time Mr. *Macaulay* had died, Mr. *Mellor* had been made a judge, and Mr. *Flowers* had been appointed a metropolitan police magistrate, and on the final trial, which began on the 22nd February and ended on the 1st March 1864, the plaintiffs were represented by Mr. *Karlsake* Q. C., Mr. *Field*, since the last trial appointed one of Her Majesty's Counsel, and Mr. *Hannen*; and the defendants by Serjeant *Hayes*, Serjeant *Ballantine*, and Mr. *Wills*. The verdict was in favour of the defendants, thus pronouncing the three codicils forgeries. It is a remarkable fact, that out of the nine counsel engaged in this great case, one is at present Lord of Appeal, four others have been or are judges of the Court of Queen's Bench, or of the High Court (one of them being now a law Lord,) and one was appointed stipendiary magistrate at Bow

Street, where he earned the respect and affection of every one who had to do with him.

Serjeant *Hayes* appeared once more before the Master of the Rolls in *Cresswell v. Jackson*. The same person who had found and had benefitted by all the codicils had one final discovery of the same sort—a document which, if genuine, would have established all the codicils. The Master of the Rolls, however, would not listen to it for a moment; Serjeant *Hayes* was not even called upon, and the long litigation came, at length, to an end.

It is difficult to speak in exaggerated language of the masterly performance of Serjeant *Hayes*, throughout this remarkable case. He was exceedingly interested in it. With one friend, it formed for months the constant, sometimes the daily, topic of discussion. Serjeant *Hayes* had every minute fact and circumstance at his fingers' ends. He forgot nothing in the long course of his conduct of the case, and never missed a point. His cross-examinations were of the very highest order, and displayed great fertility of resource, and great capacity for dealing with persons of differing characters and intelligence. His cross-examination of the principal witness for the plaintiffs at *Guildhall* was a master-piece, and elicited the greatest admiration amongst his professional brethren; whilst his speeches were such as probably no man at the Bar but himself could have made. His accurate knowledge of law enabled him to criticize, with great effect, the inartificial language and the legal solecisms contained in the codicils. His own generous nature was deeply stirred by the cruel and cowardly attempt—at one time very nearly successful—to rob the widow and orphans of the original devisee, (the second and third codicils having been “found” after the death of the devisee,) and his appeal to the jury on their behalf, was of the most eloquent and pathetic character, and astonished those who, accustomed to his usual tranquillity of manner, and placidity of disposition, were hardly aware of the real warmth of his nature, and of the indignation with which a tale of selfish-

ness and wrong never failed to inspire him. But the most remarkable part of his speech at the *Guildhall* was that, in which he brought his unrivalled powers of humour to bear upon the case. Possibly he was not without a sense that he had an appreciative auditor in the Lord Chief Justice, whose enjoyment of Serjeant *Hayes's* best passages knew no bounds. Never was the maxim—

*Ridiculum acri**Fortius et melius magnas plerumque fecat res*

better illustrated. The word “daughter” was never mis-spelt by the testator. The person charged with the forgeries habitually wrote it, by a locally phonetic mis-spelling, “doughter” “In the codicils,” said Serjeant *Hayes*, “you have ‘doughter’ “‘doughter’, ‘doughter’, ’till there cannot be a doubt about it. “If the plaintiff’s counsel can shew a ‘daughter’ of the person “accused, or a ‘doughter’ of the testator, I will give up the “case. Can you, gentlemen, be doubters?” The testator had carried on a long correspondence with the Tithe Commutation Commissioners, all correctly written. In the codicils, “tithe commutation” was spelt “tith commuation”! “It was as bad” said the Serjeant, “as if a London Stock Broker should spell “‘consols’ with an ‘u’, and make a Roman Magistrate out of the “Three per Cents.”

The codicils had been discovered under very odd circumstances; one, in a penny memorandum-book, another—which Lord Justice *Knight-Bruce* had styled, “if he might do so without disrespect,” ‘the *hay-loft* codicil’,—in a pickle-jar in a hole in the wall, under the window-cill, of an out-house. One of the principal witnesses—an attesting witness, in fact, to the second and third codicils—was one *Job Knowles*, the lessee of a quarry. “What,” said Serjeant *Hayes*, “will the jury say, when “I tell them that I will prove that an iron vice, weighing sixty “pounds was, in the testator’s life, screwed over the window-board, under which the hole containing the pickle-jar and the “third codicil were found, so that the testator, two months be-

“fore his death, with an abscess in his back, (which he described “in one of his letters, as five inches long, three inches broad, “and one and a half deep,) must have gone up to the loft, un- “screwed the vice, lifted it up, made the hole in the wall, and “deposited the jar with the twenty sovereigns and the codicil, “then covered it up, and screwed the vice over it again; and “all this—to prevent any one from finding it! The hole in the “wall! Why, imagination could hardly go beyond it! No “more codicils had been found, and one blessing of these “Chancery proceedings had been, that they had flopped the “finding of codicils. But for them, a *fourth* codicil must have “been found. It must have come! The second and third had “each been found after nine months—the usual period of ges- “tation—but perhaps, as there was so little of the property then “left to be disposed of, this might have been only a seven “months’ codicil! It was certainly difficult to conceive where “it could have been found. One could hardly imagine a more “obscure place for secreting a codicil. Perhaps, however, in “*Job Knowles’s* quarry, whilst his men were blasting the rock — “with gun-powder, of course—in some fissure, the person chiefly “interested in these findings might have seen an ante-diluvian “toad sitting on something, and said, ‘Bless me! what is that?’ “Why, what could it be?—but a codicil!”

These happy gifts have, on more than one occasion, shed a calm around their owner, and introduced a serener atmosphere into places where it was much needed. A motion was once made in the Queen’s Bench for a *habeas corpus* to *St. Helena*. and Mr. *Flood*, of counsel for the applicant, was in his second day of argument. He had been tracing how the King’s writs ran into such parts of *France*, as were in *English* occupation during the times of the *Edwards* and the *Henrys*, and had now got down to somewhere about the date of the loss of *Calais*. The learned Lord Chief Justice had betrayed many symptoms of weariness, and given vent to some unmistakeable expressions of impatience. Just about that time Mr. *Finlason*, who had

even then long ably reported for *The Times*, and who was very well known to the Lord Chief Justice, had recovered from a dangerous illness. Serjeant *Hayes* came into Court, and soon perceived that the atmosphere was heated in more senses than one! He sent up to the Bench the following lines—

“But though grim Death for once was cast,
 “He caught poor *Finlason* at last,
 “And he for final judgment flood
 “Side by side with *Solly Flood*,
 “One judgment for them both sufficed,
 “Both in one doom together spliced,
 “That *Flood* should talk for endless ages,
 “And *Fin.* report in countless pages.”

The change which came over the Chief Justice's countenance will never be forgotten by those who were present.

Many were his fugitive contributions to the amusement of the circuit. One or two illustrations may perhaps be given. At one of the circuit towns, which was also the place where the Quarter Sessions were held, a good many prosecution briefs, both at Assizes and Sessions, used to be held by a barrister well known amongst his contemporaries—*W.F.P. Morewood*. Some one passed across the table to Mr. *Hayes* a couplet, headed “*Morewood*” which ran as follows—

“Thee beaks admire, to thee attorneys run,
 “And still thou art *more woo(e)d* and they more won.”

Hayes immediately wrote and sent back—

“If epigrams thou writest, write a good ‘un,
 “Nor jest at *Morewood* with a head *more wood-en*!”

‘Till the “fingle judge” system, which has been the ruin of the circuits to which it has been applied, came into existence, the *Midland* was a very favourite circuit with the judges, and was generally chosen by the seniors on the Bench. Some thirty-five to forty years ago Baron *Parke* was constantly one of the judges for the *Midland* circuit. His partiality—it might almost be said—his craze for fresh air will dwell, to their dying days, in the memories of those who were subject to it. Who,

that was on the circuit at the time, will ever forget how in bitterly cold weather at the *Lincoln* Spring Affizes, when

“All was white, both high and low,
“As a *Cheshire* yeoman’s dairy,”

he ordered a number of windows which could not be got open to be broken—or how the mandate was obeyed, literally to the death of one popular and respected member of the circuit,—*S. J. Partridge*—who caught a violent cold on the spot, and died in a few days of pneumonia? Before this tragical incident had destroyed the farcical aspect of the learned Baron’s treatment of such matters Mr. *Hayes* had written—

“Two suitors, fadly in the dark,
“For justice came to Baron *Parke*,
“But nothing got, to their vexation,
“Save colds, fore throats, and inflammation;
“The shivering Bar and Jurymen declare
“Their dread of all such *Justices in Eyre*.”

Mr. *Hayes* was for a long time the “Attorney General” of the *Midland* Circuit, and during his tenure of office always produced some amusing *jeu d’esprit* for the entertainment of the “Circuit Court”. In the Spring of 1852 Mr. *Mellor* Q. C. was a candidate for the borough of *Warwick*. A Circuit Court was held at *Leicester* after the dinner of the bar mefs on Tuesday, March 16th. Mr. *Hayes* read a paper, to which he invited the assent of the circuit. The following passages are extracted—

“Mr. *Mellor* Q. C. is congratulated on his candidate-ship and “prospects at *Warwick*.

“Mr. *Mellor*’s address to his proposed constituents having been “laid before the Circuit Court,

“RESOLVED—that, the same being too long to be read, it be “considered as read—

“And the following additional resolutions founded on the Address “were proposed by the Attorney General and carried unanimously—

“1st. That it having been reported to the Court that some of the “constituency find it difficult to understand, or in their own language “*to make head or tail of* Mr. *Mellor*’s Address, RESOLVED, that “Mr. *Mellor* be congratulated thereon, and that the aid of a Com-

"mittee be proffered to assist in making any future edition more
"unintelligible.

* * * * *

"5th. That *Simpson*, *Merewether*, and *Brewer*,* be requested to
"enforce on the electors the expediency of giving *plumper* votes to
"Mr. *Mellor*, and *personally* to illustrate some of the '*peculiar*
"*burthens of the land*' referred to in Mr. *Mellor*'s Address."

But Serjeant *Hayes* was much more than a humourist, a lawyer, or an advocate. He was a fair Greek and an excellent Latin scholar. He re-read *Marcus Aurelius*, one vacation, two or three years before his death. He read Latin with fluency and ease. He was fond of *Horace*, and used to dip into *Quintilian*, *Pliny*, *Cicero*, and *Virgil*. He knew Italian well and was a good French scholar, very fond, amongst other French writers, of *Fénélon* and *Maffillon*. In English literature he was extremely well read, being especially fond of poetry. Our best English poets were very familiar to him, and graceful and appropriate quotations dropped naturally from him in familiar converse, and his knowledge of history was extensive and accurate. He rarely, if ever, passed a day without reading something fresh. He liked to read standing, and generally had a book on hand, which he read whilst dressing. Nor did his accomplishments end here. He loved music from the bottom of his heart, and had an exquisite touch on the piano. Even when his voice was the worse for added years, nothing could be more delightful than to listen to him wandering over the keys, with the tender touch of a spirit filled with harmony, and warbling *Moore's* Irish Melodies, or some such old song as "*Drink to me only with thine eyes*". One understood, as one

* *J. Woodhouse Simpson*, *Charles G. Merewether*, and *J. Hibberd Brewer*, the three stoutest men on the Circuit. Mr. *Merewether* succeeded Mr. Justice *Hayes* as Recorder of *Leicester* in 1868, and became a Q. C. in 1877; he was for some time M. P. for *Northampton*, and died 26th June 1884. Mr. *Brewer* was, from the year 1860 until his death, Recorder of *Northampton*; in 1861 he was appointed a Master in the Queen's Bench, which office he resigned in February 1889, and died 25th January 1890. E. M.

saw the lightness and delicacy of his touch, and felt the sympathies of his voice, how it came to pass that, with a wit rarely equalled, with powers of humour never surpassed, his shafts of ridicule were so gently aimed and so tenderly delivered, that, though they never missed the mark, they struck without wounding, and that the possessor of such dangerous gifts never made an enemy and never lost a friend.

Who shall adequately describe his private worth? his truth and tenderness at home? his affection and loyalty as a friend? the wise philosophy of his counsels, the temperateness of his spirit, the evenness of his temper, the purity and unobtrusive piety of his life, and the beauty of his example? Those who knew him best knew most to admire, knew least to wish otherwise about him: and few men have passed away leaving more tender or more lasting regrets in the hearts of those amongst whom they lived and had their being. He had his disappointments—and they were great ones—at the bar. More than once a judgeship seemed within his grasp, and his appointment was almost universally expected, but it fell to other hands. He never once betrayed the slightest forebodings or sense of disappointment, and on each of such occasions the letter of congratulation sent by him to the newly appointed judge was amongst the earliest and amongst the most generous received. “*Æquam memento servare mentem,*” was, with him more than a maxim—it was a practice.

Serjeant *Hayes* was of middle stature, if anything a little below rather than above the middle height. He was spare and exceedingly well made. At the time of his death he was as upright as a life-guardsmen, and very active. He walked to the last with a quick, brisk step, and with the spring of a man of thirty. He was very fond of exercise, both on foot and on horse-back, and very seldom indeed had too much of it. He enjoyed excellent health, and, with the exception of one serious attack of sleeplessness, which greatly distressed him, during a heavy circuit, had hardly had a day's illness for twenty years or

more before his death. "*Mens sana in corpore sano*," never found a fitter subject for application.

From the above memoir of the late Mr. Justice *Hayes*, written, as has already been stated, for this volume, by Mr. Justice *Wills*, the reader will not fail to appreciate the great genius and amiable character of the writer of the pieces which follow. It must be added that he was of a nature so modest and retiring, that few of the very clever and witty *jeux d'esprit*, of which he was author got into print, and it was only at the earnest request of friends that such as did appear were printed, and then "for private circulation only". For those which appear in this volume I am indebted to, and desire to express my thanks to Lord *Bramwell*, and Mr. Justice *Wills*.

To Mr. Justice *Wills* I am especially grateful, for the kind assistance he has given me, not only by procuring for me the pieces themselves, (some in the handwriting of the author,) and for the above memoir, but also for the loan of the original pen and ink illustrations to "*Crogate's Cafe*", by the late *William P. Manson*, Esq., of the *Midland* Circuit, and for the aid rendered to me by him throughout the work of endeavouring to preserve these clever legal *facetiae* from oblivion.

The medallion portrait of Mr. Justice *Hayes*, which forms the frontispiece to this volume, was copied, by photography, from a bas-relief, in the possession of Mr. Justice *Wills*, made, after the death of Mr. Justice *Hayes*, by *F. J. Williamson*, Esq., of *Essex*. This portrait is considered, by all who were best acquainted with the late learned Judge and therefore best able to form a correct opinion, a remarkably faithful and delicate likeness, and the manner of its execution reflects very great credit upon the artist, who, in this portrait, has succeeded in catching the happiest expression of the late Judge. For the admirable photographic copy here presented, I sincerely thank Dr. *Wills*.

I have also to thank *Thomas W. Brogden* Esq., of the *Midland* Circuit, for sending to me the two pen and ink illustrations

which appear with the verses, "*To the Memory of John Doe and Richard Roe*".

The Titles and Prefaces to "*Crogate's Cafe*" and "*The Latest Reform Bill*" are reprints of those originally prefixed to the works, when issued by the author, and the dates thereon indicate when they were first issued.

The "*Bill for the more effectual Prosecution of the War with Russia*" was printed on blue foolscap paper, in the form of a Bill introduced into the House of Lords, and was printed (as the date on it proves) in February 1855, just at the time when the War in the *Crimea* was progressing not entirely in a satisfactory manner, and shortly after a second false report of the fall of *Sebastopol* had found its way into some of the daily newspapers, including *The Times*.

All the notes, except those ending with initials, are from the pen of Mr. Justice *Hayes*.

EDMUND MACRORY.

December, 1891.

[PRINTED FOR PRIVATE CIRCULATION ONLY.]

CROGATE'S CASE;

A

DIALOGUE

in *ye* Shades,

ON

SPECIAL PLEADING REFORM.




LONDON :

B. E. BULT, PRINTER, 25, NEW QUEBEC STREET, PORTMAN SQUARE.

1854.



PREFACE TO CROGATE'S CASE.

HE following Dialogue was written some years ago, at a time when special demurrers were rife in the Common Law Courts, but when their frequency had brought considerable odium on the Law.

For the first time doubts began to be expressed concerning the utility of the mystical lore of special pleading. Was it essential, it was asked, to the administration of justice, that the simple statements of the litigant parties, of the facts out of which their disputes arose, should be governed by rules of so complicated and artificial a nature, as to require the labour of a life to understand them? Was it creditable to the Law, that suits should be determined upon points of such refined and curious technicality as to render it utterly impossible to explain to a defeated plaintiff, or defendant, why judgment had been given against him? A furious attack on special pleading ensued. The whole body of legal Reformers (a distinct branch of the Profession in recent times *) sounded the alarm, the Newspapers joined in the outcry, and not a word was heard in defence of the system from any quarter. In this state of things, the

* "As if the Law were now intended
For nothing else but to be mended," — *Hudibras*.

Writer conceived the idea of discussing the merits and demerits of special pleading, in a Dialogue between an adept in the science and a suitor, who had been one of its victims. The name of *Surrebutter*, immortalized in *The Pleader's Guide*, presented itself as appropriate for the Lawyer; and in order to give additional weight and authority to his arguments, the Writer, by a somewhat bold fiction, took the liberty of elevating him to the Bench of that Court, in which the technicalities of modern pleading had been most curiously elaborated.

The celebrated *Edward Crogate*, whose name and case were familiar to every Student of pleading, was chosen for the Suitor. This selection of a modern fictitious Judge and an ancient deceased Suitor, rendered it necessary for the purposes of the Dialogue, either that the Shade of *Crogate* should be brought to the Earth, or that the Judge should be conducted to the Shades; and the latter alternative was resolved upon, as involving a smaller violation of probability, spirit-rapping not having been then invented. In the Dialogue, the Writer has endeavoured to discuss and examine some of the fundamental principles of special pleading, to exemplify the practical working of the system in some of its extraordinary modern refinements and to contrast the different views taken on the subject by the learned adept on the one side, and the illiterate victim on the other; the former resolutely ignoring the existence of common sense, the latter desirous of sweeping away all system, and regarding a County Court Judge, administering what is called "*substantial justice*," * as the most perfect human tribunal.

The Dialogue was written with no view to publication, and after it had been finished, it was laid aside until the subject

* A good specimen of this favourite commodity is furnished in the following well-known decision:—A Defendant having alleged his inability to pay the Plaintiff's demand, the Plaintiff admitted the fact, but maintained that though the Defendant himself could not pay, he had an Aunt who could; and the Judge being of this opinion, made an order against the Aunt! This is said to be a leading County Court authority, and is commonly cited as—"My Aunt's Case."

appeared to have been deprived of all interest by the passing of the Common Law Procedure Act; a measure which has steered a middle course between the extreme views of *Surrebutter* and *Crogate* with remarkable success. The printing of a small number of copies of the Dialogue has been entirely the act of some friends of the Writer, to whose opinion he attaches a very high value, and who were desirous of preserving this trifle as a memorial and relic of a curiously artificial system now rapidly passing into oblivion.

NOTICE OF CROGATE AND HIS CASE. SEE 8 REP. 66.

EDWARD CROGATE was a Farmer in the County of *Norfolk*, who, in the sixth year of *James the First*, brought an action of trespass against *Robert Marys*, for driving his cattle off *Bassingham Common*. The defendant pleaded that a house and land in *Bassingham* were copyhold, and part of the Manor of *Thurgarton*; that the Bishop of *Norwich* was seised thereof in fee, and prescribed to have common of pasture in *Bassingham Common* for him and his customary tenants of the said house and land; that the Bishop at a Court, granted the house and land to *William Marys*; and that the defendant, as servant and by command of *William Marys molliter*, drove *Crogate's* cattle off the common. To all this, *Crogate*, or rather his Pleader, replied, *De injuria sua propria absque tali causa*; whereupon the defendant demurred at law; and the case having been very learnedly argued, the Court decided against *Crogate*, and held his replication bad. In this case, as *Coke* says, divers points were resolved, which he has embodied in the shape of four Resolutions, which are among the curiosities of the Law, and have served as the foundation for a vast superstructure of technical learning, especially in modern times.

DIALOGUE

Speakers—BARON *SURREBUTTER*, and
EDWARD CROGATE.

The Venue is in the Shades.

BARON *SURREBUTTER*.

I AM informed that you are the Shade of the celebrated *Crogate*, who, in his mortal state gave rise to the great case reported in 8 *Co.* 66, and whose name is inseparably connected with the doctrine of *de injuria*.

CROGATE.—I can't say that I quite understand you.

SUR. B.—Why, did not you bring an action of *trespass* against a man for driving your cattle, in which judgment was given against you, because you had improperly replied *de injuria*?

CROG.—Oh, aye, to be sure! I did go to law with a fellow who drove my beasts off *Bassingham Common*, where they had as good a right to be as any beasts in the county o' *Norfolk*; and as you

say, it was given against me through some knavish quibble or other. The more shame for the Judges who decided it, say I. But pray, may I ask who may you be?

SUR. B. (*surprised*)—What!—Not know me, Mr. *Crogate*? Why, I have done more to elucidate the doctrine of *de injuria* than any Judge since my Lord *Coke's* time. But I am afraid you have not taken in *Meeson and Welby* here.

CROG.—Why, we've taken in a pretty goodish number of all sorts, but I can't say I know the gentlemen you mention. But pray what brought you here, may I ask?

SUR. B.—I have just been sent here, Mr. *Crogate*, by a most erroneous decision of the Judges of your Court below, which I would gladly carry to a Court of Error, if I could.

CROG.—Well, I've tried both sorts of Courts in my time; and, though it was given against me in both places, I think, that somehow or other, one gets more substantial justice down here. There is no risk of a man (or a ghost, as I should rather say,) being turned round on a quibble. But what ground have you for finding fault with our Court?

SUR. B.—Mr. *Crogate*, I am the unfortunate victim of their loose pleading, as you shall hear. I was busily engaged in the upper regions in preparing some elaborate Judgments in further elucidation of the New Rules, when I was summarily removed by *habeas corpus* before I could find time to question the regularity of the proceeding. I made the best of my way down



"I peised, methought, the melancholy flood, With that grim ferryman whom poets write of—"

*Baron Surrebutter maketh a special traverse of the
Styx; and converseth with Charon on the sea-worthiness
of his Vessel.*



Baron Surrebutter deceiveth Cerberus.

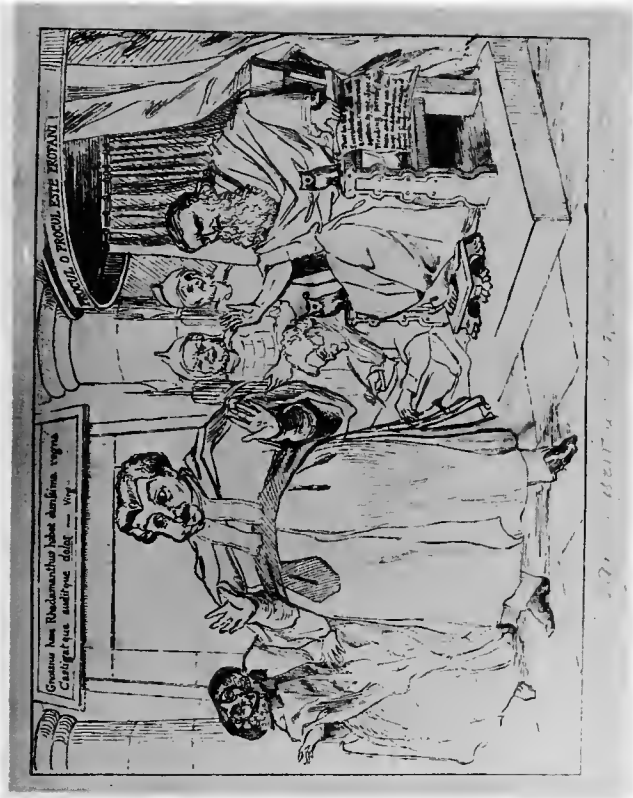
below, and arrived on the banks of the *Styx* without accident. Here I found myself in the midst of a multitude of unhappy shades, whom I understood to be *Charon's* remanets, but upon a special application I was fortunately placed at the head of his paper, and ferried over with little delay. On reaching the further shore I was considerably alarmed by *Cerberus*, whose multifarious head struck me as being decidedly bad on special demurrer. I had, however, fortunately prepared myself against this danger, by bringing with me a very special traverse, which I immediately threw out to him as a bait. He greedily caught it, and swallowed the inducement in a twinkling; but the *absque hoc* stuck in his throat, and nearly choked him, and in the mean time I made my escape. As soon as I was out of his reach, I began to revolve in my mind whether an action on the case could be supported against his proprietor, for keeping a dog used to bite at shadows, when, upon a very short notice, I was summoned to take my own trial, which, as I had not been put under terms, struck me as a great irregularity.

CROG.—I am sorry I was not by to see you tried.

SUR. B.—Mr. *Crogate*, you would have derived very little benefit from witnessing the proceedings, which were more like the summary practice of one of the new-fangled county courts, than the regular procedure of a respectable superior, or even inferior tribunal. The pleadings were *ore tenus*,

as in the early days of special pleading. *Radamantus* took the case into his own hands, and acted both as Judge and Prosecutor; and he declared against me *ex delicto*, in case for breach of duty, by having systematically obstructed justice during my judicial career, with the frivolous technicalities of special pleading. I pleaded that special pleading was a wise and useful system, and that I had helped to remedy all its defects by the New Rules. This plea was perhaps bad in form, as an argumentative general issue; but I was willing to run the risk of a special demurrer for the chance of entrapping my opponent into a denial of only one branch of my plea, and so of impliedly admitting either that special pleading was a wise and useful system, or that I had helped to remedy all its defects; in either of which cases I should have stood well for judgment. But he replied by asserting that special pleading was an abominable system, and that I had made it much worse by the New Rules. To the replication I demurred specially on the ground of duplicity; but to my astonishment, the Court, on my refusing to withdraw my demurrer, most unceremoniously set it aside as frivolous, and gave judgment against me. Now, Mr. *Crogate*, I consider the judgment to be wrong; but the idea having occurred to my mind that the Judges may possibly have been misled by the doctrines laid down in your great case, I determined upon finding you out, in order that I might converse freely with you on the subject.

CROG.—And pray, Mr. Judge, how did you



Judgment is erroneously given against Surrebutter.





Baron Surrebutter giveth his card to Darius.

discover me ?

SUR. B.—With considerable difficulty, Mr. *Crogate*. After I had been removed into these dismal regions according to my sentence, and had had time to recover a little from the surprise and mortification of this adverse judgment, I began to receive some consolation at finding myself in the very best society. I discovered, in short, that most of the magnates of the earth were no better off than myself. Kings, Emperors, and Statesmen surrounded me on all sides ; and many of the greatest Heroes and Conquerors of antiquity were pointed out to me. I was anxious, of course to see *Cæsar* and *Alexander*, but was unable to get near them. I had, however, the good fortune to see the *Persian* monarch *Darius* ; and I took the opportunity of informing him that we had recently decided in the Court of criminal appeal, that his name was not in the eye, or rather I should say in the ear of the law, *idem sonans*, with *Trius*,* a piece of news that appeared to afford him a melancholy satisfaction. Quitting this aristocratic region with regret, I was conducted to the Judicial Quarter, where I fortunately met with the ghost of Sir *Edmund Saunders*, who received me with great cordiality, and expressed much sympathy with my misfortune. This was natural enough, for he had, as he told me, been turned round pretty much as I was, in consequence of putting in what the Court said was a tricky plea.

* See 20 L. J. Rep. M. C. p. 207.

The fact was, that he had given *express colour* in his plea, and was astonished when issue was taken upon it, and he was required to prove its truth; and being of course unable to do so, or to convince the Judges that the allegation was not properly traversable, he was at once condemned for making a false defence, and thus became an illustrious victim to the ignorance of his Judges. This eminent Judge was kind enough to shew me some of the lions of the place; and to tell you the truth, Mr. *Crogate*, I was not a little shocked at much that I witnessed.

CROG.—Aye, aye, Mr. Judge, I reckon that it was not very pleasant to see the way in which some of you lawyers are treated down here.

SUR. B.—Mr. *Crogate*, I was horrified at witnessing some of the punishments of eminent special pleaders. I saw two illustrious men engaged in a complicated course of special pleading with each other, which resulted in everlasting new assignments. Another pair of pleaders similarly engaged, were subjected to the mortification of having eternal judgments of repleader awarded against one or the other of them. But the most lamentable case appeared to be that of the ghost of a special pleader of the old school, who was sentenced to draw an undemurrable plea to an action, brought after the New Rules, upon a bill of exchange, with counts for the consideration, interest, and the money counts, in which the defence was made up of part failure of consideration, part payment, a set-off as to part, and



*Baron Surrebutter meeteth Sir Edmund Saunders, and
with him witnesseth some of the punishments of eminent
special pleaders.*

payment into court of the residue. This unhappy ghost had all the New Rules and the forms of the Judges, and the decisions of the Courts upon them, given to him to enable him to accomplish his task ; but the more he read the more he was puzzled. Sir *Edmund* and I witnessed his abortive attempts with great interest ; and he pointed out to us a *dictum* of a great pleading Judge to the effect that “ there must be *some way* “ *of pleading* in such a case,* though the court “ was not bound to say what it was.” Sir *Edmund* gave me a knowing wink, and whispered in my ear that it was all very well to say so, but that he took it to be clear that the thing could not really be done ; and we left the pleader at his work, without being able to give him any material assistance.

CROG.—Well, but how came you to find me out, Mr. Judge ?

SUR. B.—Why, Sir *Edmund* was kind enough to point out to me the region assigned to departed litigants ; though he was very shy of shewing his own face in that quarter, for fear of being ill-used. And truly, Mr. *Crogate*, as soon as I set my foot within its bounds, I was attacked and mobbed in the most unmerciful manner by a host of former plaintiffs and defendants, against whom I had given judgment in my life time, as they alleged, contrary to plain justice and upon technical quibbles. I endeavoured to justify my judgments, by shewing

* See 16 Mee. and W. p. 762.

that they were in strict conformity to former decisions, but this only irritated them the more, and brought new assailants upon me; and at length they became so violent, that I was glad to make my escape to this comparatively tranquil spot, which appears to be chiefly peopled by litigants who have been long since removed from the earth.

CROG.—I suppose you found out some here whose names you had heard of before?

SUR. B.— Oh, yes! Mr, *Crogate*; I was first accosted by a venerable-looking old gentleman, who told me his name was *Twyne*,* and that he had got into a world of trouble in the *Star Chamber* about some goods and chattles which he had taken for a debt, and good naturedly suffered to remain for a short time in the possession of his debtor; upon which ground the Judges decided that he was guilty of fraud. Mr. *Twyne* assured me that whatever the Judges might have held, it was a most honest and straight-forward transaction; and that he thought it very hard that he should have been set down as a knave, and ruined, on account of a mere piece of good nature. I endeavoured to comfort the old gentleman by informing him, that although his case had given rise to much misconception, we had effectually set the matter right by recent decisions, and that he would be quite safe if ever the same thing should occur to him again; but Mr. *Twyne* only shook his head, and said this was not likely. I was next accosted by a dismal-looking ghoul, who

* See 3 Rep. 80.

came up to me and asked me in a solemn tone, if I had made my entry there for a condition broken? I at once recognized him as the shade of *Dumpr,** and was in hopes of getting into an interesting discussion with him; but my attention was arrested by a miserable-looking ghost, surrounded by books and papers, which, with a bewildered countenance, he was vainly endeavouring to read through. Upon inquiry, I found that this was the shade of the celebrated *Shelley,†* who for some misdeeds committed upon earth, had been sentenced to read and understand all the decisions and books relating to the celebrated rule laid down in his own case.

CROG.—Pray, did you happen to come across an impudent fellow named *Bagg,‡* who was formerly one of the burgessees of *Ipswich*?

SUR. B.—Indeed, I did, Mr. *Crogate*; and he conducted himself so disgracefully towards me, that I should have committed him instantly if I had had the power.

CROG.—Why, what did he do?

SUR. B.—I am almost ashamed to say. He came up to me, and without the smallest ceremony, (to use the language of the pleadings in his case) "*Convertens posteriorem partem corporis sui more inhumano et incivili versus meipsum scurriliter contemptuose inciviliter et altâ voce dixit hæc anglicana verba sequentia, videlicet,—Come and kiss.*" §

* See 4 Rep. 119.

† See 1 Rep. 88.

‡ See 11 Rep. 93.

§ See 11 Rep. 97.

CROG.—Ha! ha! ha! I can gueſs pretty well what you mean, though I don't know much Latin. *Bagg* boasts, that the Judges decided that there was no harm in his acting in this polite way to the Mayor of *Ipswich*; and that it was against *Magna Charta* to disfranchise him for it; and so, whenever he meets with a Judge coming down here, he makes a point of saluting him in the same fashion. I wish you had been by to have seen how old Sir *Edward Coke* looked when *Bagg* accosted him in this manner

SUR. B.—I must find out Sir *Edward*, and confer with him as to the means of stopping this insolence. After escaping from *Bagg*, I fortunately met with a comfortable motherly-looking female ghost who turned out to be the shade of Mrs. *Margaret Podger*,* and she was kind enough to direct me to you; but just as I was about to accost you, I was stopped by half a dozen ill-manner'd shades, looking like the ghosts of drunken mechanics, who said they were old friends of mine, and that if I was a jolly fellow, I would treat them with something to drink.

CROG.—Oh! I know those fellows well; they were the six carpenters,† who were sued by the landlord of the *Queen's Head*, at *Cripplegate*, because they got drunk in his house and refused to pay for their liquor. They contrived, however, to bamboozle the Judges, by setting up as a defence that the landlord was a relation of theirs, and the

* See 9 Rep. 104.

† See 8 Rep. 146.

Judges said they would not allow the carpenters to be made trespassers by a relation ; though, in point of fact, he was no more their relation than I was. However, they managed to win their suit on this ground, and I lost mine ; but, hang me, if I could ever find out upon what ground.

SUR. B.—Mr. *Crogate*, your view of the *Six Carpenters' Case* is singularly inaccurate : no relation was referred to in it, except a relation to the original entry of the defendants into the *Queen's Head*. The Court held, and very properly, that drinking the landlord's liquor and refusing to pay for it amounted to a mere *non feazance*, and would not make the original entry unlawful, and the carpenters trespassers *ab initio*. But, however you may have misunderstood the *Six Carpenters' Case*, you surely can't pretend to be ignorant of the resolution of the Judges in your own.

CROG.—I don't know what resolutions the Judges made ; but I know one that I made myself, and that was never to go to law again. However, it was too late ; my beasts were sold to pay the lawyer's bills, and I was a ruined man. More shame for my Judges ! say I.

SUR. B.—Mr *Crogate*, I am astonished at your sentiments. The decision in your case was a most sound one ;—it has been admirably reported by Sir *E. Coke* ; it has given the rule to countless decisions since ; and has, in fact, constituted one of the great landmarks of special pleading ; and yet you are so unreasonable as to complain of it.

CROG.—Why, don't I tell you I was ruined by it ?

SUR. B.—What on earth can that signify, Mr. *Crogate*, if the decision was a sound one?

CROG.—But I say it wasn't a sound one. My beasts, as I have told you, had as good a right to be on *Bassingham Common* as any beasts in the County of *Norfolk*, and the defendant had no right to drive them off.

SUR. B.—Very likely; indeed we may assume this to be true.

CROG.—Well, then, if I had all the right on my side, and the defendant had all the wrong on his, how came the Judges to give it against me?

SUR. B.—For this plain, simple, and conclusive reason, that you had most improperly replied *de injuria*.

CROG.—Will you be so good as to speak so that I may understand you.

SUR. B.—Mr. *Crogate*, it is difficult to use plainer language; but in order to explain the point so as to make it perfectly clear to your uninstructed mind, you should have confined your replication to the traverse of some one material allegation in the plea, and should not have used the cumulative traverse *de injuria* in a case in which it was clearly inadmissible. My Lord *Coke* observes in the 4th resolution in your case, “that the issue raised by your replication would have been full of multiplicity of matter, where an issue ought to be full and single, for parcel of the manor demisable by copy, grant by copy, prescription of common and commandment would all be parcel of the issue.” I presume that you now fully comprehend the great principle upon

which your case was decided.

CROG.—Odzooks, man alive! (I beg your pardon for calling you so when you're dead), you seem to suppose that I was one of the builders of the Tower of *Babel* instead of a plain *Norfolk* farmer. I fancied I'd a sort of notion of what you were driving at before, but I'll be hanged if your last explanation has not driven it clean out of my head.

SUR. B.—Mr. *Crogate*, I can go no further. I have used the very plainest terms which the science of pleading admits of, and if you can't understand me you must impute it to your ignorance. It is hopeless, I see, to attempt to explain the niceties of a science to a person who is ignorant of its rudiments. Read *Stephen* and *Chitty* and the *Doctrina Placitandi* and *Com. Digest* Title *Pleader* and the Notes to *Williams's Saunders*, and the New Rules, and my Judgments upon them, and particularly the sixteen volumes of *Meeson and Welsby*; and when you have mastered them I shall find no difficulty in explaining the matter to you. But I forgot that you may probably be unable to obtain these works in this inconvenient locality, and in that case I am afraid you must remain in ignorance of the grounds of the decision in your own case to all eternity, for it is not to be expected that I can find time to teach you the first principles of pleading.

CROG.—Well, Mr. Judge, before I went to law I'd a notion that justice was a very plain and simple thing, but the end of my law-suit and your expla-

nations have shewed me that I was mortally mistaken. However, as I don't think I am quite so stupid as you seem to suppose, and as you won't give me any more explanations of your own (which to be sure only make the matter worse), perhaps you'll answer a few questions of mine, for I confess I should like to get to the rights of the whole concern.

SUR. B.—With great pleasure.

CROG.—Well, then, let's start with this:—My beasts were my own, and they had a right to be on *Bassingham Common*.

SUR. B.—These points did not come in issue, and may be assumed to be as you state.

CROG.—Well, the rascal that drove them off, set up as defence that he was acting under orders of another party, who, as he said, had a copyhold house and land, and a right of common, and beasts of his own on the common. and told the defendant to drive off my beasts.

SUR. B.—You have correctly stated the substance of the defendant's plea of justification.

CROG.—Well, to proceed. All this, d'ye see, was untrue from beginning to end; the man, whose title he set up, had no copyhold, no right of common, no beasts on the common, and gave no orders to the defendant to drive off my beasts. Now I told my lawyer to let the Court know the rights of all this; and he told me that his counsellor had pleaded that there was not a word of truth in the whole defence. What should I expect then? Why, of course, that my case would come on at our 'Sizes and that I

should have won the day. But lo! and behold, a trial comes off, as I'm told, behind my back in *London*, and the Judges give it against me on all points without hearing a single witness, and I'm fold up and ruined!

SUR. B.—A hard case. But hard cases make bad law.

CROG.—I don't know what you mean by that, Mr. Judge, but I think bad law makes hard cases. But what I want to make out is, how the Judges came to give this rascally judgment against me? I always supposed that my lawyer did not let them know that the whole defence was untrue, and that the defendant got them to believe it.

SUR. B.—Quite the contrary. The defendant by his demurrer expressly admitted, as I've told you, that all the facts, or what you absurdly enough call the rights of the case were against him. The true reason for the decision was, that you denied the whole plea instead of denying a part of it only.

CROG.—Why, have not I told you that there was not a word of truth in it from beginning to end?

SUR. B.—That is immaterial. You should have denied only part of the plea, and admitted all the rest to be true.

CROG.—What! admit lies to be true?

SUR. B.—Yes, certainly, in such a case as yours.

CROG.—Come, come, Mr. Judge, you're hoaxing me. This is no place for cutting your jokes.

SUR. B.—Mr. *Crogate*, I am speaking in sober seriousness, and assure you that your case was de-

cided against you solely and simply because your pleader had (most improperly) denied the whole of the defendant's plea, instead of confining his denial to some one part of it, and so admitting the rest to be true.

CROG.—You astonish me! Pray, be so good as to explain it to me. For what reason on earth, or in the regions below (as I should rather say down here), I should be obliged to admit lies to be true?

SUR. B.—Because it is an established rule that pleadings should not be double. When a plea consists of several distinct assertions (and whether true or false is immaterial), the plaintiff is bound to elect whether he would give an affirmative or negative answer to it, as he is not allowed to do both; and if he wishes to plead in denial, he must select some one assertion for denial, and admit the rest of the plea. An exception to this rule prevails where the plea consists of mere matter of excuse, and involves no question of title, interest, matter of record, or authority, derived mediately or immediately from the plaintiff; but this exception did not apply to your case.

CROG.—Then, if my opponent tells two falsehoods, and I want to deny them both, the law will make me admit one to be true.

SUR. B.—Certainly.

CROG.—And if he tells ten I must admit nine of them to be gospel.

SUR. B.—Exactly so; you reason correctly. If a plea (not amounting to mere matter of excuse) consists of twenty, or any greater number of dis-

tinct assertions, no matter whether true or false, you must still confine your denial to one, and consequently admit the rest.

CROG.—Well, we live and learn (as I used to say before I was dead). Now, d'ye see, I had a notion in my own mind that in order to do justice you must first get at the truth; but it's a queer mode of getting at the truth to make people admit falsehoods. However, you say that this is a rule of that which you call special pleading.

SUR. B.—It is one of the great fundamental rules of that admirable science. The whole object of special pleading is to bring the parties in every cause to issue upon some one single point, and this object could never be attained unless duplicity were strictly prohibited.

CROG.—Well, I always heard that duplicity was a bad thing; but I never supposed before now that there would be any duplicity in denying a string of falsehoods.

SUR. B.—I use the term *duplicity*, not in its ordinary sense, in which it is not opposed to good pleading, but in its scientific and technical sense; duplicity, in this sense, may consist either in telling too much truth, or in denying too much falsehood. The rules of good pleading do not prohibit falsehood when it is free from duplicity, but they do prohibit duplicity, even though it may be in strict accordance with the truth.

CROG.—Mr. Judge, you're getting a great way out of my depth.

SUR. B.—Mr. *Crogate*, I have explained to

you that the object of special pleading is to bring the parties to trial upon some one point.

CROG.—Well, I always supposed the object of justice was to get at the whole truth, but it seems that the special-pleading way of doing justice is to shut out the truth upon all points but one.

SUR. B.—Exactly so, Mr. *Crogate*; you are now beginning to form a correct idea of the science of special pleading,—to know which, as the great *Littleton* says, “is one of the most honorable laudable and profitable things in our law.”

CROG.—Egad, Mr. Judge, I wish I'd known as much of it before I went to law, and that scamp should never have got the better of me.

SUR. B.—How so, Mr. *Crogate*?

CROG.—Why, look you; I'd have begun the game by telling lies against him, and making him admit them all but one; according to the rules of special pleading I could have put him in a pretty fix, then.

SUR. B.—There is some originality and acuteness in your idea, but it would not have availed you; for, if the defendant had succeeded in shewing the falsehood of the particular point upon which he had taken issue, he would have succeeded in the action, and all the admissions of other points would have gone for nothing; so, in your case, if you had confined yourself, as you ought to have done, to the denial of part of defendant's plea, and had disproved that, you would have succeeded in your action.

CROG.—But suppose, Mr. Judge, that I had

taken the wrong fow by the ear ; and that when the trial came on, either from bad information, or bad luck, or from my witnessses not coming up to the mark, or his witnessses swearing too strong, he was able to beat me on that one point, though all the rest of his story was untrue ?

SUR. B.—In that case he would undoubtedly succeed, as you would not be allowed to contest at the trial any point which you had admitted in pleading.

CROG.—Now, that is just what I complain of, Mr. Judge ; if a man tells a dozen lies against me anywhere else, I may deny them all ; then, why should I not be allowed to do so in a Court of justice ?

SUR. B.—Because the rules of good pleading prohibit it ; and if it were allowed, the whole object of pleading, which, as I have told you, was to bring the parties to an issue upon a single point, would be defeated.

CROG.—Mr. Judge, if parties have several points which they dispute about, why in the name of common sense should they not be allowed to try them ? If you determine to shut out the truth by making the parties admit all the points set up by their opponent, except one, you may as well go the whole hog at once, and make one side admit the whole case of the other, and so put an end to dispute. To my simple mind, this would be every bit as right and just as the special-pleading rule, and a much shorter way of settling law-suits.

SUR. B.—Mr. *Crogate*, the rule which confines

the parties to a single point, raised either by way of negation or affirmation, is as ancient as the science of pleading. It originated, as my Brother *Stephen* states, in the practice of oral pleading, and was founded upon reasons of convenience ; nothing can be more convenient for Judge and Jury, than to bring all causes by the statements and counter-statements of the parties to one plain intelligible single point.

CROG.—That might be all very well, if people went to law for the convenience of the Judges and Juries, and not to get justice for themselves. If they have only one point in dispute, they don't want more than one tried ; but if they dispute about several, it is a wicked injustice, that the law should refuse to try more than one. Really, Mr. Judge, this is as plain as that two and two make four, and so there's an end of it.

SUR. B.—There would be more weight in your objections, Mr. *Crogate*, if special pleading existed in its original integrity ; but it is proper that I should inform you, that since your time, a great relaxation of the system was made by a Statute passed in the reign of Queen *Anne*, and which enables defendants, with leave of the Court (which is seldom refused), to plead several matters, so that they may now deny any number of material allegations in the declaration, or set up any number of distinct affirmative defences.

CROG.—Ah ! that makes a great difference ; and I suppose that, if my case had happened after this Act of Parliament, I should have been allowed to

deny the whole of that fellow's trumped-up plea.

SUR. B.—Certainly not, Mr. *Crogate*; the privilege of pleading several matters was confined, by the statute, to the pleas of defendants (except as to plaintiffs in replevin who are *quasi* defendants), and your replication would have been as bad after the statute as it was before.

CROG.—Well then, all I can say is, that it was a rascally Act of Parliament. It is bad enough to deny justice to both parties alike; but to give it to one, and deny it to the other, because one happens to be what you call plaintiff, and the other defendant, is really too bad.

SUR. B.—You are unreasonable, Mr. *Crogate*. The policy of the Statute of *Anne*, in permitting an unlimited number of pleas, may, indeed, be very questionable, but surely a stand ought to be made some-where. If several replications were allowed, we must allow several rejoinders, several furrejoinders, and so on to several furrebutters; issues would be multiplied like the population, according to the theory of *Malthus*, in geometrical progression; and a single action of *trespass* might so expand itself, as to require the skins of a flock of sheep for the *nisi prius* records. Now, however advantageous this might be for the agricultural interest, it would be, in other respects, an absolute evil; and consequently the law, while it allows of an unlimited number of pleas, strictly prohibits duplicity in a replication. And even with respect to pleas, although a defendant may raise twenty or more different defences, each must form the

subject of a distinct plea ; and the least duplicity in any one plea will make it bad on demurrer.

CROG.—Well, Mr. Judge, this seems to me very like swallowing a camel, and straining at a gnat. If the law can manage to swallow twenty separate pleas, it need not be very squeamish about a little of what you call *duplicity* in one of them. But, for the life of me, I can't conceive why, when a man is allowed to deny the whole case of the other side, and to set up any other answer he may have to it, he should not be allowed to do so, in the shortest and simplest manner, so as to make one story of it. Why, really, Mr. Judge, it must be arrant nonsense, to make a man split his case into I don't know how many different parts, in order to make what you call separate pleas of it ; and there can be no reason for this, except to puzzle and create expense.

SUR. B.—This, Mr. *Crogate*, was a necessary consequence of the application of the established principles of pleading to the statutory privilege of pleading several matters. The Act of Parliament, in allowing this privilege, left special pleading in other respects as it previously existed ; and, consequently, each plea was treated as if it were the only one in the case, and the Court dealt with it upon the same principles that were applicable when the defendant was confined to a single plea.

CROG.—And a pretty jumble you must make of it ; for, if I can make out your meaning, it seems to be this ; that the Act of Parliament having

altered your special-pleading system, root and branch, and altogether put an end to your fine plan of chopping and lopping all questions, till you bring them to a single point; you still went on with your foolish quibbling rules, just as if you had still only one point to try.

SUR. B.—Mr. *Crogate*, the Judges have only to administer laws, not to make them. The Legislature might have remodelled the system of pleading, when the statute was passed, but it did not think proper to do so. The Act was not a perfect measure.—it left some evils unremedied, and produced some defects and incongruities. It was reserved to a later age to introduce more comprehensive improvements, and to bring the system of pleading to perfection by means of the New Rules.

CROG.—Oh! you've been making new rules about special pleading have you; then, I suppose, as a matter of course, that you've pretty nearly done away with the whole thing?

SUR. B.—Done away with special pleading? Heaven forbid! On the contrary, we adopted it (subject to the relaxation introduced by the Statute of *Anne*), in even more than its original integrity; for we have enforced the necessity of special pleas in many actions in which the whole case was previously left at large, on the merits under the general issue. And we framed a series of rules on the subject, which have given a truly magnificent development to this admirable system; so much so, indeed, that nearly half the cases

coming recently before the Court, have been decided upon points of pleading.

CROG.—You astonish me. But, pray how do the suitors like this sort of justice?

SUR. B.—Mr. *Crogate*, that consideration has never occurred to me, nor do I conceive that laws ought to be adapted to suit the tastes and capacities of the ignorant. At first, to be sure, we found that in consequence of our having restored the ancient strictness of pleading, where it had been relaxed, and applied it to several of the most common forms of action to which it had never previously been applied, plaintiffs were put into considerable perplexity by special pleas. If they denied too much, a demurrer for duplicity followed; and if they only denied one point, and consequently admitted the rest, they sometimes traversed the only allegation which could be proved, or, to use your language, they took the wrong sow by the ear. In this state of things, though justice was by no means uniformly defeated, yet this result took place more frequently than was convenient, and some obliquy was beginning to attach on the New Rules. In this emergency, Mr. *Crogate*, we fell back on the replication *de injuria* with the happiest success; and by a series of decisions, which I shall by and by explain to you, we gave it an application so extensive, as would have astounded my Lord *Coke*, and must be signally gratifying to you, considering the frequent reference that has necessarily been made to your great case in our recent decisions. And thus, Mr. *Crogate*, we were

enabled to bring the system of pleading as near to perfection, as I believe to be possible.

CROG.—Well, Mr. Judge, though I'm rather doubtful about your great improvements, it is, at all events, some consolation to think that, if my case had arisen after your New Rules, I should have been allowed to deny the whole of that fellow's trumped-up defence.

SUR. B.—You would have been allowed to do nothing of the sort, Mr. *Crogate*. Your replication would have been just as bad after the New Rules, as it was before.

CROG. (*in a rage*)—Then I must tell you, Mr. Judge, that your New Rules, as you call them, can't be worth a farthing.

SUR. B.—Really, Sir, I trust you will speak of the New Rules with more respect, otherwise I must close our discussion.

CROG.—With all my heart, Mr. Judge, and the sooner the better, as we are not very likely to agree. But pray, may I ask, if there is no way of getting justice up above, without all this special pleading?

SUR. B.—The forms of pleading are more or less strict, according to the nature of the action; and in many actions there is, in substance, no special pleading at all. In actions on *contracts*, if the facts are such as to render it necessary, according to the established rules of the court, to declare specially, great strictness and particularity are enforced, and the simplest questions are often involved in much complication of pleading; but

if the case admits of the use of certain general or common counts, (which indeed are applicable in the great majority of ordinary actions) the whole matter is left pretty much at large, and the most complicated questions are tried on simplest statements. So in actions on *torts*, you may have more or less special pleading, entirely according to the form of action, which you elect, or are obliged to adopt. Thus, if your goods are taken away, and you sue the wrong-doer in *trespass* (as you did in your own case, Mr. *Crogate*), you will have special pleading in all its strictness; but if you choose to sue in *trover*, and make a fictitious statement that you casually lost your goods, and that the defendant found and converted them; here he is allowed to deny the fictitious loss and finding, and may set up almost any possible defence, under a denial of the alleged ownership and conversion of the goods; or if you prefer to sue in *detinue*, and state a fictitious delivery or bailment of the goods to the defendant (which fiction he is not allowed to deny), you will have rather more special pleading than in *trover*, but considerably less than in *trespass*. If you are assaulted and beaten, you cannot escape special pleading by any fictitious allegation, but you are obliged to sue in *trespass*, and the defendant to justify specially. If you sue for a *trespass* to your land, however small the injury, the greatest strictness of pleading is required, but if you are actually turned out, you may recover the land itself by a fictitious mode of proceeding called *ejectment*, without any special pleading at all.



Baron Surrebutter maketh it cleare to Crogate that he ought not to have replied "de injuria".

CROG.—Mercy upon us, what an embrangement ! Surely, if special pleading is a good thing, you ought to have it in all actions alike ; but at all events, a man ought not to be allowed to escape from it by telling all sorts of nonsensical falsehoods.

SUR. B.—Mr. *Crogate*, the forms of action are of great antiquity ;—they are part and parcel of the law, and great confusion would no doubt be caused from any mad attempt to alter them. In framing the New Rules, we adopted the principle of enforcing special statements as far as we could, consistently with the established forms of action ; but we could hardly go further without a revolution in pleading. For, where a plaintiff is allowed the privilege of stating a pure fiction in his declaration, it would have been extremely inconvenient to compel the defendant to state the real facts of his defence. And, if the plaintiff's fictitious statements were prohibited, an evident absurdity must follow, unless the form of action itself were abolished. How could you have an action of *trover*, wherein loss and finding was alleged ! This would be *lucus a non lucendo*.

CROG.—Well, well, Mr. Judge, I see how the whole thing stands pretty clearly. The more you patch and mend a bad thing the worse you make it : and this is just what you have been doing by your New Rules. But what I want to know is, whether there are no courts, where you can get justice, or something like it, without any special pleading ?

SUR. B.—Oh, yes. In consequence of an idle

and absurd clamour on the part of the public, some inferior courts were established a short time back to enable the common people to sue for small debts and damages under *Twenty* pounds ; and in these courts, the proceedings are wholly free from the refinements of special pleading.

CROG.—But, if special pleading is a good thing, why is it done without in these courts ?

SUR. B.—Because of the expense and delay which the forms of correct pleading would occasion, and because neither practitioners nor judges could be expected to understand the system properly ; and moreover, Mr. *Crogate*, in these trifling matters, the great object is to administer substantial justice in the simplest form and at the least expense.

CROG.—Well, in my ignorance, I should have thought that would have been the object in great cases as well as small. But, pray, what mode of proceeding do you use instead of special pleading ?

SUR. B.—The simplest process in the world. The forms of action have been practically abolished. The plaintiff gives a concise statement or notice of his claim, and the defendant of his defence (where it is considered proper that he should do so) in plain *English*, unfettered by the technical rules of pleading. If either party really stands in need of further information, the judge requires it to be given ; or if either party complains of surprise, and requires further time, he adjourns the trial upon just terms. The case being understood and ready for trial, he decides it, and there is an end

of the matter.

CROG.—And does this answer?

SUR. B.—It has not been complained of. In fact suitors were so well satisfied with these new-fangled courts, that they were anxious to go to them in cases which ought to have come to us; and they began an improper practice of splitting their demands, which we endeavoured to put a stop to by *prohibitions*; but this was all in vain, for the jurisdiction of these courts was speedily extended to *Fifty* pounds, and beyond that amount by consent; and it remains to be seen whether the effect will not be, to transfer to them the great bulk of the civil business of the country, and to leave the superior Courts without employment; a result which will be obviously fatal to the law of *England*.

CROG.—But why, in the name of common sense, can't you proceed in your superior Courts, in pretty much the same simple and rational manner which has been found to answer in these inferior courts, and get rid of your special pleading?

SUR. B.—What? Mr. *Crogate*.

CROG.—Why, Mr. Judge, you have made it quite plain to me, that justice and special pleading can never get on together; and as people go to your courts for justice, and not for special pleading, the sooner you get rid of your special pleading nonsense the better.

SUR. B.—Heaven forbid! Mr. *Crogate*. Why, if special pleading were abolished, what would become of all the New Rules, and the valuable

decisions on them, in the sixteen volumes of *Meeson and Welsby*? Really, Mr. *Crogate*, your mind has been most unfairly prejudiced against the science by the decision of your own case; but you should recollect that to this apparent misfortune you owe an immortality; for, never will the name of *CROGATE* be forgotten, while the replication *de injuria*, continues to be drawn by the hand of a special pleader. Let me now endeavour to unfold to you the magnificent series of decisions in which the doctrine of *de injuria* has been elaborated since the New Rules; and for the purpose of classifying these cases, I propose to consider,—First, When *de injuria* may clearly be replied. Secondly, When it clearly cannot be replied. Thirdly, When it is probable that it may be replied. Fourthly, When it is probable it cannot be replied. And, Fifthly, When it is altogether doubtful whether it can or cannot be replied. In the course of this discussion, I shall have to point out and explain what amounts to mere matter of excuse—a nice and difficult subject, and with respect to which much variety of opinion has prevailed. I shall also have to consider and examine in detail all the resolutions of the Judges as reported by Sir *E. Coke* in your case; and I shall shew you how this third resolution, in so far as it refers to an authority given by the law, is at variance with the instances given in his first resolution; and also how his fourth resolution, so far as it refers to mere multiplicity of matter, without reference to the nature and quality of such

matter being an objection to *de injuria*, is unfounded; both of which points were made tolerably clear by the great case of *Bardons v. Selby*.* I shall also have to shew you that *de injuria* is inapplicable where the plea amounts to an argumentative denial of the declaration,† or where the plea discloses matter of subsequent discharge such as payment, accord and satisfaction, as we settled in numerous cases,‡ or when the plea is in the nature of a set-off; for this is not properly matter in excuse, but rather in the nature of matter in extinguishment.§ We shall further see that *de injuria* is inapplicable where the matter of excuse is not of an affirmative character, but is a mere negative excuse, such as the non-delivery of an attorney's bill.|| So also, where the plea is (according to the third resolution in your case) founded upon authority mediately or immediately derived from the plaintiff, a point of considerable nicety, and on which contradictory decisions were given.** So where the plea claims any title or interest in the goods or other subject-matter of the action (as laid down in the second resolution in your case); with this limitation, however, that it must be a title or interest prior to, and irrespective, and independent of, the act complained of; for want of due attention to which distinction, much

* See 3 B. and Ad. 2. s.c. 9 Bing. 756.

† See 3 Mees. and W. 230.

‡ See 2 C. M. and R. 159. 4 Mees. and W. 123, etc.

§ See 7 Mees. and W. 314. 1 Q. B. 197.

|| See 7 Q. B. 402.

** See 1 Q. B. 197.

misconception has arisen. A multitude of other points and distinctions will also demand our attention ; and amongst others I shall have to shew you that when this replication is clearly allowable, yet if the pleader does not use the proper and accustomed form of words, but introduces some new-fangled allegation, such as that the opposite pleading is "*untrue in substance*," this will be clearly bad, because (as we settled in a recent case*) by alleging a plea to be *untrue in substance*, you necessarily put in issue immaterial and unsubstantial matters ; but by denying the truth of the whole plea in the common form, *de injuria*, only material and substantial matters are put in issue.† But our especial attention will be directed to the long and important series of cases on the application of *de injuria* to pleadings on bills of exchange. In these actions, Mr. *Crogate*, before the New Rules, special pleas were wholly unknown ; but the cases that have been decided on pleading points arising out of them since the New Rules would fill volumes ; and a treatise might be written on the use and abuse of *de injuria* in these actions. The discussion on which I propose to enter cannot be compressed within very narrow limits, but as we have plenty of time before us, Mr. *Crogate*, there can be no reason why we should not go into the subject fully ; and I have no doubt that before we

* See 10 Mee. and W. 367, 369.

† It seems hard to believe that, two years only by-gone, (from 1853, when this Dialogue was first printed) this mode of legal "*wrangling*" was deemed and taken to be "excellent learning".

I shall have finished, all your objections to special pleading will be removed. But you don't appear to be attending to me.

CROG.—Attending! Mr. Judge. Why, to tell you the plain truth, I have heard a great deal too much of you long since. It was no part of my sentence to be obliged to listen to such an abominable rigmarole. Oh! Mr. Judge, I think of all the unhappy wretches who have come to your Courts for justice, and who have been turned round and ruined by such miserable quirks and quibbles as those with which you have been puzzling me for the last half hour. No wonder, indeed, that their ghosts should have made some little disturbance when they caught sight of you down here. Why, it is quite plain to me, that you can't understand half of your own decisions; and that with all your fine-spun distinctions and crotchets, you have got into a mystification and confusion, from which you can find no straightforward way out. But the worst of all is, that my unhappy name has been mixed up with all this foolery and injustice. How many poor devils have learnt to curse the name of *Crogate*, through being ruined by quibbles which none of them could understand, but which, when explained, are shewn to be arrant nonsense. What have I, *Edward Crogate*, done that I should suffer this? and what on earth could possess me, that, like an idiot, I should ever have thought of going to law with the scamp who drove my beasts off *Bassingham Common*? Oh! *Crogate! Crogate!*
[Exit, in great anguish of mind.]

SUR. B.—The ignorance and prejudices of this man are absolutely astounding ! But what could I expect down here after such an absurd decision of the Court ? I hardly know where to turn, or how to employ myself ; but I shall endeavour to find out the learned Editor of *Saunder's Reports*, in order to converse with him on a question which gave me great uneasiness when alive ; I mean, whether a *Virtute Cujus* is traversable.

[*Exit.*]

NOTE.

THE Readers of the foregoing Dialogue, who have been interested in the character and sentiments of *Surrebutter*, may not be displeased at seeing the following poetic effusion,—*The Special Pleader's Lament*,—which was attributed to the great Pleader at an early period of his career.* It is curious, as illustrating the early bent of a great and original genius, and as shewing that the language of Special Pleading is not incapable of adaptation to the emotions of the tender passion.

* The *Special Pleader's Lament* (without the stanza, on p. 43, interpolated by the Printer's Devil) appeared, many years before the above Dialogue was written, in a legal newspaper, preceded by the following letter to the Editor,—

SIR,—If the publication of the following lines in your valuable paper would not be inconsistent with the gravity of its character, you are at liberty to give them to the legal world. They were written by a lamented young friend of mine, who might perhaps have risen into eminence as a Special Pleader, if a sudden attack of the influenza had not cut short his legal career. His health had been long delicate, and I am disposed to think it was partly owing to the unfortunate attachment which is alluded to in this little poetical effusion. His feelings had obviously been deeply compromised in the affair ; but, from the character of the object of his affections, his friends were of opinion that even if his wishes had been gratified, it would have been a clear case of *mis-joinder* of parties, and that consequently a *nonsuit* would have taken place.

Some critics may perhaps think that the language of the Poet is rather too technical ; but surely this is a narrow and unfounded objection. No one can write or speak naturally who endeavours to divest himself of his own peculiar habits of living and thinking ; and the greatest Poets invariably give to all the

THE SPECIAL PLEADER'S LAMENT.



AY *Mary*, can'st thou sympathize
 With one, whose heart lies bleeding;
 Condemn'd to wake from "Love's young
 dream,"
 And take to special pleading ?

For, since I lost my *suit* to you,
 I care not now a fraction
 About these stupid suits at law ;
 These fenselefs forms of action.

But in my lonely chambers oft,
 When clients leave me leisure,
 In musing o'er departed joys,
 I find a mournful pleasure.

personages whom they introduce, a language appropriate to the character of each individual. Thus, the Shepherd draws his allusions from the images of pastoral life ; the Soldier from the camp and the battle-field ; the Sailor from his gallant vessel and the trackless deep. And if the same general principle is to embrace all analogous cases, a Special Pleader may refer to his own sublime science without giving *cause for demurrer* ; and if a Conveyancer were to turn poet, it would be no *objection, in the abstract*, to his verses, if they "*savoured of the realty*."—I am, Sir, your obedient servant, Q.

It is fortunate that the 'cutting short of the legal career' of *Surrebutter* by the sudden attack of influenza, alluded to in the above letter of his friend Q, can have been only a case of *suspended animation*, from which the great Pleader happily revived, and was spared to give to Lawyers the New Rules, and to the Public many benefits besides those mentioned in the above Dialogue. E. M.

How well I know the spot, where first
I saw that form ethereal !
But, ah ! in transitory things
The *venue* 's not material.

And reading *Archbold's Practice* now,
I scarce believe 'tis true,
That I could set my heart upon
An *arch bold* girl like you.

But then that bright blue eye sent forth
A most unerring dart.
Which, like a *special capias*, made
A prisoner of my heart.

And, in the weakness of my soul,
One fatal long vacation,
I gave a *pledge to prosecute*,
And *filed my declaration*.

At first, your taking *time to plead*,
Gave hopes for my felicity ;
The doubtful negative you spoke,
Seemed *bad for its duplicity*.

And then that blush so clearly seemed
To pardon my transgression,
I thought I was about to snap
A *judgment by confession*.

But soon I learned, most fatal truth
How rashly I had *counted*,
For *non assumpsit* was the plea
To which it all amounted.

Deceitful maid ! another swain
 Was then adored by thee ;
 The *preference* you gave to him
 Was *fraudulent* to me.

But then, alas ! the Barons held
 The transfer of this treasure
 Could not by me be *set aside*,
 Being made when *under pressure*.*

Ah ! when we love, so *Shakespeare* says,
 Ill-luck is sure to have us ;
 * The course of true love never ran
 Without some *special traverse*.

Say, what *inducement* could you have
 To act so base a part ?
Without this that you smiled on me,
 I ne'er had lost my heart.

My rival, I was doomed to see
 A husband's rights assert ;
 And now 'tis wrong to think on you,
 For you're a *feme coverte*.

When late I saw your son and heir, †
 'Twas wormwood to a lover ;
 But then the plea of *Infancy*,
 My heart could not get over.

* This stanza was interpolated by our Printer's Devil, an aged gent., who had seen better days, and once (Temp. *Geo.* II.) had been a Commissioner of Bankrupts.


† This and the next stanza can hardly fail to remind the reader of the well-known lines of Lord *Byron*, beginning—

“ When late I saw thy favourite child, &c.”

I kissed the little brat, and said,
"Much happiness I wish you;"
But, oh! I felt he was to me
An *immaterial issue*.

Mary, adieu! I'll mourn no more,
Nor pen pathetic ditties;
My pleading was, alas! in vain,
So now I'll stick to *Chitty's*!

ELEGY WRITTEN IN THE TEMPLE GARDENS.

HE Gard'ner's bell proclaims the close
of day,
The motley crowd wind slowly home
to tea ;

Soft on the *Thames* the day-light dies away,
And leaves the walks to darkness and to me.

Now shine the glittering gas-lamps on the sight,
The wardens now the outer portals lock,
And deepest stillness marks th' approach of night,
Save when the watchman calls "past ten o'clock."

Save, also, when from yonder quaint old tower,*
With solemn sound the bell salutes the ear,
And wand'ring damsels when they learn the hour,
Trip through the gloomy courts with haste and
fear.

In those high rooms where clients ne'er intrude,
And here and there a light doth dimly peep,
Each in his lonely set of chambers mewed,
The *brief*-less crowd their nightly vigils keep.

* The Middle Temple Hall Tower—a modern antique.

The grave Attorney, knocking frequently,
 The bustling Clerk, who hastens to the door,
 The bulky brief, and corresponding fee,
 Are things unknown to all that lofty floor.

Small comfort theirs when each dull day is o'er,
 No gentle wife their joys and griefs to share;
 No quiet homeward walk at half-past four,
 To some snug tenement near *Russell Square*.

Oft have they read each prosing *Term Report*,
 Dull Treatises and Statutes not a few;
 Full many a vacant day they've passed in Court,
 Full many a barren circuit travell'd through.

Yet let not Judges mock their useless toil,
 Nor scorn the sapient face which no man knows;
 Nor ask, with careless and contemptuous smile,
 If no one *moves* in all the long back rows?

Vain is the Coif, the ermin'd Robe, the strife
 Of Courts, and vain is all success e'er gave;
 Say, can the Judge, whose word gives death or life,
 Be *moved by certiorari* from the grave?

Nor you, ye Leaders, view them with ill-will,
 If no one sees their speeches in *The Times*,
 Where long-drawn columns oft proclaim your skill
 To blacken innocence, and palliate crimes.

Can legal lore or animated speech
 Avert the *sentence* which awaits us all?
 Can *nisi prius* craft and snares o'er-reach
 That Judge whose look the boldest must appall?

Perhaps in those neglected rooms abound
Men skill'd to deal with all the quirks of laws,
The rules of right with *cafes* to confound,
And common sense pervert by splitting straws

But ah ! to them no Clerk, his golden page
Rich with retaining fees, did e'er unroll ;
And sad neglect repressed their legal rage,
And checked the quibbling current of the foul.

Full many a Barrister, who well could plead,
Those dark and unfrequented chambers bear ;
Full many a Pleader born to *draw* un-fee'd,
And waste his *counts* upon the desert-air !

Some *Follett*, whom no client e'er would trust,
Some *Wilde*, who gained no verdict in his life ;
In den obscure some *Denman* there may rust,
Some *Campbell* with no Peerefs for his wife.

The wits of wondering juries to beguile,
The wrongs of injured clients to redress,
To gain or lose their verdict with a smile,
And read their speeches in the daily press,

Their lot forbade,—nor was it their's, d'ye see ?
The wretched in the toils of law to lure ;
To prostitute their conscience for a fee,
And shut the gates of Justice on the poor.

To try mean tricks to win a paltry cause,
With threadbare jests to catch the laugh of fools,
Or praise in Court before all human laws,
The lofty wisdom of the last *New Rules*.

Not one *rule nisi*, even “*to compute*,”

Their gentle voices e’er were heard to pray ;
Still and sequestered, *motion*-less and mute,
In the remote back seats they passed each day.

Yet e’en their names are sometimes seen in print ;
For frail memorials, on the outer doors,
Disclose in letters large, and dingy tint,
The unknown tenants of the upper floors.

Door-posts supply the place of *Term Reports*,
And splendid plates around the painter sticks,
To shew that he who never *moved the Courts*,
Has moved from number two to number six.

For who, to chill neglect a luckless prey,
His unfrequented attic e’er resigned,
And moved with better hopes across the way,
But left a neat tin-plate stuck up behind ?

Strong is the love of fame in noble minds,
And he, whose bold aspirings Fate doth crush,
Receives some consolation, when he finds
His name recorded by the Painter’s brush.

For thee, who, mindful of each *brief*-less wight,
Dost in these motley rhymes their tale relate,
If, musing in his lonely attic flight,
Some youthful student should inquire thy fate,

Haply some Usher then in Court may say—
“At morn I’ve marked him oft, ’twixt nine and ten,
Striding, with hasty step, the *Strand* away,
At four o’clock to faunter back again ;

“There in the *Bail Court*, where yon quaint old
Judge

Doth twist his nose, and wreath his wig awry,—
Lifless for hours he’d sit, and never budge,
And pore upon a book,—the Lord knows why !

“Oft would he bid me fetch him some *Report*,
And turn from case to case, with look forlorn ;
Then bustling would he run, from Court to Court,
As if some *rule of his* ! were coming on,

“One morn I missed that figure lean and lank,
And that pale face, so often marked by me,
Another came,—nor yet was he in *Banc*,
Nor at th’ *Exchequer*, nor the *Pleas* was he.

“The next day as, at morn, I chanced to see
Death’s *peremptory paper* in *The Times* ;
I read his name, which there stood number three,
And on his tomb I read these doleful rhymes—

E P I T A P H.

“Here rests a youth lamented but by few,
A Barrister to Fame and Courts unknown ;
Brief was his life—yet was it *brief*-less too,
For no Attorney marked him for his own ;

“Deep and correct his knowledge of the laws,
No Judge a *rule* of his could e’er refuse ;
He never lost a client or a cause,—
Because, forsooth, he ne’er had one to lose ;

“E’en as he lived unknown—unknown he dies;—
 Calm be his rest, from hopeless struggles free,
 Till that dread Court, from which *no error lies*
 Shall *final judgment* pass on him and thee.”




The Sheriff and his "buff jerkins" sink fatigued with pursuing the Defendant, who is "running up and down with one Richard Roe".

To the eye of the careful reader Richard's attenuated form "running up and down" with the Defendant must be manifest.
 —quid frustra simulacra fugacia captas?
 Quod petis est nusquam. —
 Ovid, Metam.

To the Memory of
JOHN DOE AND RICHARD ROE.

(LATELY DECEASED*)

HOULD *Doe* and *Roe* be e'er forgot,
And never brought to mind?
Should *John* and *Richard* go to pot,
And not a mourner find?
For auld lang fyne, my friends,
For auld lang fyne;
We'll chaunt a dirge for *Doe* and *Roe*,
For auld lang fyne.

Of old, when *latitats* were rife,
At grim misfortune's frown,
A fhy defendant, half his life,
Went "*running up and down*"—
Then *Roe* deserted not his friend,
Who knew not where to dine,—
But wander'd with him to the end,
For auld lang fyne.

* On the 24th October, 1852. Forfaken by friends (the Common Law Commissioners, 1850,) who, by the help of *John Doe* and *Richard Roe*, had reaped many a golden harvest, and thus "left naked to their enemies,"—

"Ingratitude, more strong than traitor's arms,
Quite vanquish'd them,"

and, at a good old age, hoary with years, this faithful pair, on the 24th day of October 1852, died of broken hearts, the dissolution of the one following that of the other so rapidly that their departures may be said to have been *simultaneous*. E. M.

When served with writ, and brought at last,
Within the Law's dread pale,
No sad defendant then stuck fast,
For want of *Common Bail*;
For *Doe* and *Roe* in goodly trim,
With charity divine,
Stood forth, and gave their bail for him
And auld lang fyne.

When plaintiffs oft were fore perplex'd,
In term time or vacation,
For want of names to be annex'd
Beneath the declaration ;
Then *Doe* and *Roe* upheld the suit,
Like staunchest friends of thine,
And *pledges* gave to *prosecute*,
For auld lang fyne.

When quarrels rose about the right
To houses or to lands,
Then *John* and *Richard* took the fight
Entirely in their hands,
And *Richard*, ever rash and brave,
To enter did incline,
And turn'd *John* out "*with stick and stave*
For auld lang fyne.

Then, sad to say, *Doe* sued poor *Roe*,
For this his valiant part,
But *Richard* would not ward the blow,
It almost broke his heart,



Richard's "force and arms".

The illustration represents the tenant in possession of the 10 houses, 10 messuages, 10 barns, 10 stables, 10 gardens, 10 orchards, 10 acres of arable land, &c., &c., (which are faithfully depicted) peacefully ploughing, unaware that John Doe or any other person is being ejected from the said tenements, a fact which is visible only to the eye of the esoteric disciple of the law, to whom Richard's "force and arms" are apparent.

A letter of advice he penn'd
In most pathetic line,
And signed himself "*your loving friend*",
For auld lang fyne.

Now *Doe* and *Roe*—tis grief to tell—
For Law's Reform ye die,
And, as I bid ye both farewell,
A tear bedims my eye—
Ye were my friends in life's first stage,
But no one can divine
The use, in this enlightened age,
Of auld lang fyne!

Ye spread upon the page of *Tidd*
A ray of Fancy's charm,
And if but little good ye did,
Ye did but little harm ;—
And this is more than I can say
For Law Reforms so fine,
And Law Reformers of today,
And auld lang fyne!

SONG,
THE COCK AND THE DOG.*

AT Leamington there lived a man of whom
the world may say, Sir,
That, if he's neither dead nor gone, he's
living there today, Sir,
An honest life he might have led, at least to my
believing,
But, tempted by the Devil, he betook himself to
thieving.

*Bow wow wow, tol de riddle,
tol de riddle, bow wow wow.*

One morn, as he, with hungry looks, about the
town was going,
He spied a fine fat cock, beside a doorway, boldly
crowing ;

* "This Song," (says Mr. Justice *Wills*, to whom I am indebted for it, and for most of the pieces in the volume,) "as I have often heard from members of the Bar, who must have been present on the occasion, pretty accurately represents Mr. *Miller's* defence, and all the other incidents of the case." It was tried at the *Warwickshire* Sessions, Mr. *Hayes* appearing for the prosecution and Mr. *Miller* for the prisoner. At the close of the speech of Mr. *Miller* for the prisoner the Chairman summed up to the Jury as follows:—"Well, gentlemen, you and I have often heard of a '*Cock and Bull Story*', but this is, I presume, the first time that any of us has heard of a '*Cock and Dog Story*'. Consider your verdict." The intelligent Jury instantly acquitted the prisoner.

The effect produced upon the mind of Mr. *Hayes* by this trial and verdict abundantly appears in the above Song, which he wrote immediately after the fore-going incident, and frequently sung at the Mefs-dinners of his Circuit, when called on "for a Song".

E. M.

And in the twinkling of an eye, upon the head
did knock it,
Then caught it up and wrung its neck and stuffed
it in his pocket.

Bow wow wow, &c.

But, luckless wight! while busied in this very wicked
act, Sir,
The owner of the cock came out, and caught him
in the fact, Sir,
And having caught him in the fact, a' prigging
what war'nt his'n,
He gave him to the constable, who marched him
off to prison.

Bow wow wow, &c.

The Sessions came, and all his friends were in
most dire affliction ;
No hope had they that aught on earth could save
him from conviction ;
Cock-slaughter was a dire offence, that o'er the
seas must send him,
But still they thought it decent Mr. *Miller* should
defend him.

Bow wow wow, &c.

The Jury sworn—the Officer the pris'ner did ar-
raign, Sir,
The Prosecutor told his tale, and proved the case
quite plain, Sir ;

Then, with a gentle voice and smile of soft insinuation,

The pris'ner's Counsel thus began his cross-examination—

Bow wow wow, &c.

“Now, Witness, tell me, when you saw this poor lad with your fowl, Sir,

“Did you not see a furious dog, and hear him loudly howl, Sir?”

“I saw no dog,” the Witness said,—the Counsel quoth “So be it,

“But still there *might* have been a dog, although *you* might not see it”!

Bow wow wow, &c.

Then to the Jury—“Gentlemen,” said he, with exultation,

“A case of perfect innocence can need no long oration ;

“My duty I shall best discharge to this poor harmless youth, Sirs,

“By telling you, in his own words, the plain and simple truth, Sirs ;

Bow wow wow, &c.

“This honest lad was passing by, and as the stars would have it,

“He saw the dog attack the cock, and rushed at once to save it,—

“He fought the dog—and made him give his wicked purpose o’er, Sirs ;

“If the cock had been a Christian, what on earth could he do more, Sirs ?”

Bow wow wow, &c.

“The dog ran off—the cock remained—but ah ! ’twas all in vain, Sirs ;

“’T was hurt so much, he wrung its neck—to put it out of pain, Sirs ;

“In such a case what feeling heart could think of standing neuter ?

“And he put it in his pocket—just to give the prosecutor !

Bow wow wow, &c.

“And now concludes my client’s case, so simple and so true, Sirs—

“The self-same thing might have occurred to any one of you, Sirs—

“We do not call the dog, ’tis true, for that we’re not to blame, Sirs,

“No man alive can call a dog, unless he knows his name, Sirs.”

Bow wow wow, &c.

The Jury cried “We’ve heard enough, we’ve one and all agree’d, Sir ;

“*Not Guilty* is our verdict ;”—and the Pris’ner thus was free’d, Sir ;

And from my song may now be drawn a moral
that may mend you,
If ever you're caught thieving Mr. *Miller* must
defend you!

Bow wow wow, &c.

EPIGRAM,

ON THE ABOVE, WRITTEN BY *PARKE*, B. (Lord *Wensleydale*)

SITTING AT NISI PRIUS, AT *Warwick*.

FATHER *Aeneas* to *Virgil* owes his fame

To *Homer* great *Achilles*—

So *Miller* owes a death-lefs name

Entirely to your quill, *Hayes*!

A
BILL
FOR THE
MORE EFFECTUAL PROSECUTION
OF THE
WAR WITH *RUSSIA*,
AND FOR SECURING
THE LIBERTY OF THE PRESS,
AND FOR
OTHER PURPOSES.



A

BILL

FOR THE

More effectual Prosecution of the War with
Russia, and for securing the Liberty of
 the Press, and for other Purposes.

[Ordered to be Printed, February 1855.]

WHEREAS the War with *Russia* has not hitherto been carried on in such manner as to satisfy Public Opinion ; And whereas Public Opinion is completely and exclusively represented by "The Times" Newspaper ; And whereas all Persons hitherto engaged in the active Prosecution of the said War are wholly incompetent to perform any of the Duties confided to them ; And whereas "The Times" Newspaper is fully competent to discharge all such Duties : Be it therefore enacted, That the entire future Conduct and Management of the said War shall be confided to the aforesaid Newspaper.

Conduct of
the War con-
fided to
"The Times"
Newspaper.

II. And be it further enacted, That all Officers, Military or Naval, employed in the said War shall from henceforth hold their Commissions entirely at the Will and Pleasure of "The Times" Newspaper,

Officers to
hold Com-
missions at
the Pleasure
of "The
Times".

which shall have full and absolute power at any time hereafter to displace all or any of such Officers, and appoint Special Commissioners to command the British Army and Navy, to conduct the Commissariat, and generally to carry on all the Operations of the said War.

Proceedings
of Councils
of War to be
reported in
"TheTimes"

III. And be it further enacted, That all Councils of War shall from henceforth be holden in the presence of a Reporter from the aforesaid Newspaper, and the Proceedings thereof published in the said Paper.

"TheTimes"
empowered
to take
Sebastopol.

IV. And whereas the Siege of *Sebastopol*, which was mainly undertaken to satisfy Public Opinion, (so represented as aforesaid), hath proved a more difficult undertaking than was predicted; and, notwithstanding the aforesaid Newspaper announced that the said City had been taken before the Siege thereof had been commenced, the aforesaid City nevertheless still continues to hold out; Be it therefore enacted, That the aforesaid Newspaper shall have full and absolute power to take the said City of *Sebastopol*; and that if the said Newspaper shall again announce the capture thereof, the said City shall be deemed to have been taken to all intents and purposes whatsoever.

"TheTimes"
empowered
to negotiate
with the
Emperor of
Russia.

V. And be it further enacted, That from henceforth the powers and authorities of all Ambassadors and Plenipotentiaries from this Country, in reference to any Negotiations with *Russia*, shall absolutely cease and determine; and the aforesaid "Times"

Newspaper shall alone have full power to negotiate with the Emperor of *Russia* in such manner, and at such times, and for such purposes, as to the said Newspaper may seem expedient.

VI. And whereas one of the Correspondents of the said Newspaper hath visited the Dominions of the *Sultan*, and hath been instrumental in digging up and disinterring, and conveying from thence into this Country, divers Figures of winged Bulls with Men's Faces, and of Men with Birds' Beaks; and by reason thereof the said Correspondent hath become, and is the only person living who is competent to understand the Turkish question; And whereas, also, the said Correspondent hath witnessed an Engagement from the maintop of a Ship-of-War, and by reason thereof he hath become, and is, exclusively competent to decide on the merits of all Naval Commanders; Be it therefore enacted, That the aforesaid Correspondent of the said Newspaper shall be (during the pleasure of the said Paper) "The Times' Diplomatic Commissioner to the *Sultan*" in lieu and substitution of Her Majesty's Ambassador at *Constantinople*; and that he shall also be (during such pleasure as aforesaid) "The Times' Naval Commissioner in the *Black Sea*," with full power to displace all Admirals and other Officers in the British Fleet, and to appoint others in their stead; or to order and direct the Operations of the said Fleet in person, as to the aforesaid Newspaper may appear most expedient.

Correspondent of "The Times" to be "The Times' Diplomatic Commissioner to the *Sultan*", and also "The Times' Naval Commissioner in the *Black Sea*".

"TheTimes"
empowered
to displace
Ministers;
and appoint
Cabinet
Commission-
ers. Cabinet
Councils to
be held in
*Printing-
house Square.*

VII. And whereas Her Majesty's Cabinet Ministers have hitherto proved themselves to be wholly incapable of governing the Country ; And whereas "The Times" Newspaper is fully competent to the performance of the said last-mentioned Duty: Be it therefore enacted, That from and after the passing of this Act, the aforesaid Newspaper shall have full power and authority from time to time. and at all times, to dismiss all or any of the present or any future Cabinet Ministers, and to appoint Special Commissioners to govern the Country in their stead, such new Ministers to be called "The Times' Cabinet Commissioners"; and all Cabinet Councils shall be held in *Printing House Square*, and the Proceedings thereof duly reported in "The Times".

"TheTimes"
relieved from
Stamp Duty.

VIII. And whereas the aforesaid Newspaper hath been most inadequately rewarded for its great Public Services by the removal of the Stamp Duty in respect of its Supplement : Be it therefore enacted, That from henceforth the said Newspaper shall be published free of all Stamp Duty whatsoever.

No proceed-
ings for Libel
to be taken
against "The
Times".

IX. And be it further enacted, That from henceforth no proceedings shall be taken against the aforesaid Newspaper for or in respect of any Libel or alleged Libel ; and that if any Judge shall at any time hereafter presume to pronounce any Judgment or Sentence against the said Newspaper, or the Publisher thereof, such Judge shall be removed from

his office, and shall be liable to impeachment.

X. And be it further enacted, That no Court Martial or other Court, Civil, Military, or Ecclesiastical, shall from henceforth pronounce any Judgment or Sentence, in any way at variance with the Opinion of the aforefaid Newspaper, expressed in any Leading Article thereof; nor shall any Jury presume to recommend any Prisoner to Mercy, contrary to the Opinion of the said Newspaper; nor shall Her Majesty or her Successors pardon or reprieve any Criminal, except in accordance with the Opinion of the aforefaid Newspaper, so expressed as aforefaid.

All Courts to give Judgment according to the Opinion of "The Times".

XI. And whereas certain Members of both Houses of Parliament have had the presumption to find fault with the Conduct of the aforefaid Newspaper and of the Correspondents thereof; For remedy whereof be it enacted, That if from henceforth any Member of either Branch of the Legislature shall presume to complain of the aforefaid Newspaper, or any of its Correspondents, or to question in any manner the absolute Infallibility of the said Newspaper, such Member shall thereupon forfeit his seat in the Legislature; and if the Branch of the Legislature to which such refractory Member may belong shall presume to entertain any such Complaint as aforefaid, its Powers and Privileges shall from thenceforth *ipso facto* cease, and the same shall be transferred to and vested in the aforefaid Newspaper.

Penalty for Members of the Legislature who attack "The Times".

Defaming
"TheTimes"
a Misdemeanor,
punishable on summary
conviction.

XII. And be it further enacted, That if any Person shall from henceforth, by speaking or writing, presume in any way to slander or defame the aforesaid Newspaper, or to question the entire Purity of its Motives or Management, or to question the Correctness of any Statements therein, or to assert or insinuate that the said Newspaper hath at any time changed its Opinions upon any subject whatsoever, such person shall be guilty of a Misdemeanour, and shall be liable to Punishment by Fine or Imprisonment, or both, on summary conviction before any Magistrate.

The Rev.
S. G. O. to
be Arch-
bishop of
Canterbury.

XIII. And whereas the Rev. S.G.O., one of the principal Correspondents of the said Newspaper, is fully competent to correct all Errors and Abuses of Doctrine or Discipline in the Church of *England*, and to reform and ameliorate the state of Society, and to set to rights things in general: Be it therefore enacted, That the said Rev. S. G. O. shall from and after the passing of this Act be Archbishop of *Canterbury*, with the full powers of the Pope of *Rome* and such other powers as he may deem expedient; and that he shall have absolute Authority to displace all Ecclesiastical Dignitaries, and appoint others in their stead, and to make all such Reforms and Alterations in the Established Religion, and all such Ameliorations in the state of Society and things in general as he may consider advisable; Provided always that the said Rev. S. G. O. shall hold office only during the

pleasure of "The Times," and shall notify and promulgate all his Decrees, Bulls, and Ordinances in Letters addressed to the Editor of the aforesaid Newspaper, not exceeding Three Columns in length.

XIV. And whereas certain obscure Journals are now published which falsely call themselves Newspapers, though publishing no news (except at second hand from the columns of the "Times"), and which said obscure Journals from time to time insolently controvert and contradict the Opinions and Statements published in "The Times" Newspaper aforesaid ; And whereas Public Opinion being (as hereinbefore mentioned) adequately and completely represented by the said last-mentioned Newspaper, the publication of the said obscure Journals is useless and mischievous : Be it therefore enacted, That from and after the passing of this Act no such other Newspapers shall be permitted to be published ; and the printing, publishing, or reading of any Newspaper other than "The Times" aforesaid, shall be a Misdemeanor punishable by Fine or Imprisonment, or both, on summary conviction before any Magistrate.

Certain
obscure
Journals
suppressed.

29 *Victorie.*—*Session 1856.*

THE
LATEST
REFORM BILL,
WITH A
PREFACE.

"O, reform it altogether."

SHAKESPEARE.



LONDON:
BUTTERWORTHS, 7, FLEET STREET,
Law Publishers to the Queen's most excellent Majesty.
1866.

PREFACE

TO

THE LATEST REFORM BILL.



BRIEF explanation is required on presenting the Public with a new Reform Bill. The extreme difficulty of framing a successful Measure has by this time been thoroughly proved. Over and over again the Country has declared for Reform; the two great political Parties have been long since pledged to it, and nothing has remained but to carry it out. Here, however, the difficulty begins, for the question arises, "What sort of Reform is to be carried out?" And on this point the general Concord disappears and universal Discord usurps its place. No one can hit upon the true Measure of that Reform which all admit to be necessary; and in considering the fate of the numerous abortive Reform Bills that we have seen in recent times, we are reminded of the close resemblance, pointed out by the greatest Philosopher of Antiquity, between States and Individuals. Every Individual well knows how much he himself stands in need of Reform; how often he has declared for it, and how earnestly he has desired it; but if some well-meaning Friend should undertake to tell him of his various Defects and indicate their Remedies, it is, to say the least, very doubtful whether he would

fare much better than our recent political Reformers, and he could hardly fare worse.

The History of recent Reform Bills is indeed a melancholy one. When the consistent Veteran of Reform has at various periods stood forward to advocate such mild changes in the Constitution as appeared to him to be fairly required by the introduction of Railways and Electric Telegraphs, (to say nothing of Joint Stock Companies "limited") his patriotic efforts to benefit his Country and improve the position of the great Whig Party have been received with indifference and almost with contempt. The most mortifying contrasts have been drawn between the mighty proportions of his original Reform Act and those of its puny supplement, and defeat has been accompanied with stale sneers about Finality, and impertinent advice about resting and being thankful. When the once-adventurous Leader of the Opposition in the Commons chivalrously entered the lists as a Reformer his fate was, if possible, worse. No true Liberals could tolerate any Liberalism but their own; and even the temper of Mr. *Bright* gave way at the impudence of a Tory in daring to turn Reformer. The adoption of the once favourite County Ten-pounder failed to conciliate a single Opponent; new Rights were scoffed at as Fancy Franchises, and defeat and dismissal were the natural results of Conservative Reform. When such was the fate of the great Leaders, what could be expected of minor Men? And indeed, all that can be said of the efforts of the small fry of retail Reformers is, that they have occasionally furnished convenient opportunities for a pretended redemption of hustings' pledges, by enabling professed Reformers to vote for Reforms which they were certain would never be carried out. It is not surprising that, after such pitiable failures, our late wise and able Premier (the effects of whose loss we are now beginning practically to experience) resolutely declined to commit himself to any definite measure of Parliamentary Reform. Even the

great self-appointed Leader and Ruler of the Democracy has hitherto abstained from bringing forward any Reform Bill of his own ; and this forbearance is perhaps fortunate, for as he is not of a nature to tolerate any opposition, he would certainly have carried his Bill by a *Coup d'Etat*, after the example of his great Continental Prototype, who, in order to make clear ground for his own great Reforms, found it absolutely necessary to begin by getting rid of the "dirty Conspiracy" of Constitutional Government.

But new prospects appeared to open out when the present Government, under a singularly fortunate combination of circumstances, announced their intention of producing a Reform Bill. When Reformers considered into whose hands the care of the Bill had fallen, their hopes were naturally raised to a very lofty pitch, and they began, at length, to reckon confidently upon obtaining that much-desired and long-promised modern *Magna Charta*, which, reflecting all the accumulated intellect and wisdom of the Nineteenth Century should remove every conceivable defect in the *British* Constitution, and so satisfy the reasonable wishes of all moderate Men.

Various speculations were afloat as to the precise nature of the measure. All believed that it would be highly original, and the more sanguine expected that it would prove at once thoroughly Radical and eminently Conservative. Some predicted Universal Suffrage, qualified by an Educational Test, that none but a real "Working-Man" could pass ; and which would necessarily convert him at once into a Scholar and Philosopher. Others, who took a more utilitarian and practical view, and were accustomed to look on the *Bright* side of things, insisted that the only Restriction should consist in affixing and defacing a Penny Stamp on the Voter, the Revenue arising from which, by the aid of Plurality of Votes and frequent Elections, would enable the Government to remove all indirect Taxation, and

eventually to pay off the National Debt. Some of the Chambers of Commerce were in favour of a Franchise that should consist in the not having made an Arrangement under the last great measure of Bankruptcy Reform, but they abandoned it on discovering the alarming extent to which this would reduce the Constituency. However, it is needless to enlarge further on these anticipatory conjectures. The Bill came out, and certainly did not realize the sanguine expectations of the Country. The little it contained was of the ordinary staple of the contents of former unsuccessful Bills—its only originality was in its omissions. Its reception was in some respects odd enough, for its chief opponents were from the ranks of professed Reformers, of whom the more Conservative objected to it for not going much further, while some of the more thorough going Liberals denounced it as revolutionary because it lowered the Suffrage, and declared, amid vociferous cheering, that they would support no Reform Bill that did not leave things exactly as they were. One professed admirer the Bill found in Mr. *Bright*, who graciously vouchsafed to accept it as a petty instalment of the great debt due to the Democracy, and who, while he damned it with the faint and almost sarcastic praise of honesty, stated, with his usual moderation, that it was very unimportant whether Parliament liked the Bill or not, as he and his working Men would make them pass it. In this state of things the question has been shifted from the merits of the Bill, which even its best friends found it difficult to discover, to the merits of the Ministry, which no one thought of disputing, and another instance has been afforded of the great difficulty of producing a really successful Reform Bill.

Under these circumstances it is impossible to avoid a suspicion that there must be something wrong in the principles on which so many abortive Reform Bills, Liberal and Conservative, have been based; for they have all been founded on similar principles, and the main difference between them has arisen

from the particular Party by whom they have been brought forward. Impressed with this idea, the present Writer has ventured to frame the following Bill, the principle of which will be found to be entirely different from that of any previous Reform Bill. He may, perhaps, be permitted to say in its favour, that it is simple in its construction, and free from the questionable details that have proved fatal to so many former Bills. It has neither the fancy Franchises of the old Conservative nor of the new Government Bill, but permits the Lodgers to enjoy their Lodgings in peace, and disturbs not with politics the tranquil parsimony of the Savings'-Bank Depositors. It is free alike from the Incomprehensibilities of *Hare*, and the Pluralities and Crinoline Suffrage of *Mill*. It is founded on an intelligible principle, and makes use of existing machinery the efficacy of which has already been tested and established. The Writer, however, does not put it forward as a perfect measure, but considers that its policy may be fairly open to discussion. If it be urged that it does make a final settlement of the question, it may be answered that this objection is equally applicable to all Reform Bills from *Magna Charta* downwards. If the Finality of the great Reform Bill has already become a bye-word, who will be so absurd as to predict Finality of any subsequent measure? Will any candid Man say that he really believes that if the present Government Bill, with all its unknown Supplements, or any other Reform Bill were passed, it would be possible to obtain the favour of any one of the large Constituencies of the Metropolis (to go no further) without promising to vote for "a large measure of Parliamentary Reform"? Or that a Candidate could gain the support of those powerful and enlightened Bodies, the Metropolitan Vestries, without giving a pledge to remove from Parliament all those defects from which they themselves are so happily free?

Considering the notion of a final settlement of the Reform question to be altogether inadmissible, the Writer has limited

his views to the duration of a single Parliament: following in this respect the policy of the late illustrious Prime Minister, whose successful and most popular Administration showed how well his Countrymen appreciated his wife's forbearance.

As the great Parties in Parliament stand committed to widely different Schemes of Reform, the Writer by no means confidently expects that his Bill will become Law; but he believes that it will be found in harmony with the real views of many thoughtful Politicians on both sides. And, at all events, it may serve some useful purpose, if (in accordance with a modern precedent of high authority) it be laid on the Table for the purposes of information, until the Public Mind be made up on the great question of Parliamentary Reform.



ANNO VICESIMO NONO VICTORIÆ REGINÆ.

A
BILL
TO
Amend the LAW relating to REFORM
in PARLIAMENT.

WHEREAS it hath pleased Providence to visit this Country not only with the Rinderpest or Cattle Plague, but also with another contagious or infectious Disease, supposed to be akin thereto, but affecting the Human Race :

And whereas the last-mentioned Disease has existed in this Country for some Years under a low intermittent Type, but has lately broken out with increased Virulence, arising, it is believed, from *trans-Atlantic* Infection, and in its present Shape has sometimes been known as "*Bright's*

Preamble.

Disease," but more commonly as "*The Reform Plague*".

Symptoms of
Reform
Plague.

And whereas the ordinary Symptoms of the Reform Plague are great Heat and Excitement in the System, Confusion in the Head, Incoherence of Speech, Foulness of the Tongue, Spasmodic Action of the Muscles, Disturbance and Deterioration of the Faculties of Memory, Reflection, and Judgment, ending in an entire Subversion of Common Sense, and the Establishment of various morbid Delusions :

Delusions
arising from
the Reform
Plague.

And whereas the following are some of the Delusions arising from the Reform Plague in its advanced Stages, that is to say, that a free Constitution is of no use except to be everlastingly mended ; that the only proper Business of the House of Commons is to discuss how its Members ought to be elected ; that when Legislation has been Wise and Liberal, and in accordance with the Wants and Wishes of the People, it furnishes convincing Proof of the Necessity of a fundamental Change in the Representation ; that every Man is *primâ facie* entitled to the Franchise, and that the Burthen of Proof lies on those who would disqualify him ; but that the Possession of Intelligence, Education, and a reasonable Amount of Property, are good Grounds for Disqualification, and entitle the Possessors to be swamped by the Ignorant and Indigent ; that the only true Basis of Representation is non-Taxation, as personified in the "Working Men" ; that there are no real working Men except Mechanics at

weekly Wages, all the rest of the Community being Drones and Idlers ; that the working Men aforefaid, when unenfranchised, are Models of Purity and Integrity, but when enfranchised and called Freemen, are among the worst Examples of Corruption and Vice ; and that therefore the House of Commons should be returned by and represent the Views of the said "Working Men" as hitherto expounded in a striking Manner by their liberal and enlightened Trades Unions.

And whereas the said Reform Plague in its virulent Shape has hitherto been confined to a comparatively small Number of Persons, and the Community at large have been happily exempt therefrom, but it is highly expedient and necessary to take Measures to check and if possible to abate the same :

Be it therefore enacted by the Queen's Most Excellent Majesty, and by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, as follows :—

I. This Act shall be cited for all Short Title. Purposes as "The Reform Plague Prevention Act, 1866."

II. The word "Person" shall not signify Definition of Terms. Bull, Cow, Ox, Heifer, or Calf, nor shall it signify Horse, but the same may mean and include an Animal of a humbler kind, unless the Context shall be inconsistent therewith.

III. "The Cattle Diseases Prevention Incorporation of Acts. Act 1866," shall be incorporated here-

with, and shall be construed with this Act as one Act; and the "Local Authority" and "Inspectors" mentioned in the said "Cattle Diseases Prevention Act, 1866," shall have the like Powers to deal with the Reform Plague under this Act which they have to deal with the Rinderpest or Cattle Plague under that Act, subject to such Variations as are herein contained.

Powers of
Inspectors.

IV. Such Inspector may at all times apprehend any Person or Persons whom he may have reasonable Ground for believing to be affected with the Reform Plague; and the Certificate of any such Inspector that a Person is affected with the Reform Plague shall be conclusive Evidence in all Courts of Justice and elsewhere of his being so affected.

Treatment of
Diseased
Persons.

V. Every Local Authority shall cause all Persons so certified to be affected with Reform Plague to be dealt with as follows, that is to say, in the earlier Stages of the Disease the Person affected shall be subjected to the Diet of *Worms*, and kept upon Pickled Onions, Garlick and *Afascetida*: If the Symptoms be not removed, he shall then be subjected to such Treatment and suffer such Operations as shall be prescribed and ordered by Professor *Gamgee*; and if he shall survive such last-mentioned Treatment, and the Disease shall not abate, he shall in such Case be confined to a Lunatic Asylum for the Remainder of his natural Life.

Burial of
Deceased Pa-
tients.

VI. Any Local Authority may purchase or hire a piece or pieces of Land

for the Purpose of burying as soon as possible, in their skins, all Persons dying of the Reform Plague or of the Treatment to which they may have been subjected under this Act for the Cure thereof : And for this Object the said Local Authorities shall have and exercise the powers of the Lands Clauses Consolidation Act and of the Burial Boards Acts.

VII. Provided always, and Be it hereby expressly declared and enacted, That Conscience Clause. no Conservative Parson shall be bound against his own free Consent to read the Burial Service over any Person so dying from the Reform Plague, or its Treatment as aforesaid ; but that the Certificate of the Inspector given under the 4th Sect. of this Act may be pleaded and relied on as a complete Exemption from all Penalties and Liabilities, Ecclesiastical or Temporal, by reason of a Refusal so to do.

VIII. Every Local Authority shall within its District cause all Houses and Premises in which Persons affected with the Reform Plague have resided, or Purification of Premises, and Precautionary Measures. which they have frequented, to be thoroughly cleansed, purified and disinfected, and shall cause all printed and written Bills or Drafts of Bills, Amendments, Motions and Resolutions relating to and tending to the Diffusion of the Reform Plague, and also all printed and written Speeches, Addresses, and other Documents having a like tendency, or referring in any manner to Representation or Non-Representation, or to the Six-pounders, Seven pounders, Fourteen-pounders, or any other

Pounders whatsoever, to be burnt, or to be consumed in such other way as the Lords of Her Majesty's Privy Council shall order and direct.

Non-Amendment and
Duration of
Act.

IX. This Act shall not be amended during the present Session of Parliament, and shall continue in force for Six Years next after the End of such Session.

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